

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
BLUE HILLS OFFICE PARK LLC,)	
Plaintiff/Defendant-in-Counterclaim)	
)	
v.)	Civil Action No. 05-CV-10506 (WGY)
)	
J.P. MORGAN CHASE BANK, as Trustee for)	
the Registered Holders of Credit Suisse First)	
Boston Mortgage Securities Corp., Commercial)	
Mortgage Pass-Through Certificates, Series 1999-C1)	
Defendant)	
)	
and CSFB 1999 – C1 ROYALL STREET, LLC)	
Defendant/Plaintiff-in-Counterclaim)	
)	
and)	
)	
WILLIAM LANGELIER and GERALD FINEBERG)	
Defendants-in-Counterclaim)	
_____)	

AFFIDAVIT OF MEREDITH A. SWISHER

Meredith A. Swisher, on oath, deposes and states as follows:

1. I am an associate at the firm of Bernkopf Goodman LLP, which maintains a business address at 125 Summer Street, Boston, Massachusetts and am a member in good standing of the Massachusetts bar. I am trial counsel for the plaintiff Blue Hills Office Park LLC (“Blue Hills”) and the defendants-in-counterclaim William Langelier (“Langelier”) and Gerald Fineberg (“Fineberg”). I am making this affidavit solely for the purpose of authenticating certain documents, including deposition transcripts, deposition exhibits, discovery responses and other documents in support of Blue Hills, Fineberg and Langelier’s Opposition to Motion for Summary Judgment Defendant and Plaintiff-in-Counterclaim J.P. Morgan Chase Bank (“J.P. Morgan”) as Trustee for the Registered Holders of Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates 1999-C1 (“J.P. Morgan”) and Blue Hills, Fineberg and Langelier’s Opposition to Motion for Summary Judgment of Defendant and Plaintiff-in-Counterclaim CSFB 1999-C1 Royall Street, LLC (“CSFB”).

2. True copies of excerpts of the Deposition of David Andelman dated April 24, 2006 (“Andelman Deposition”) are attached hereto as **Exhibit “1.”**

3. True copies of excerpts of the Deposition of Richard Clarke dated April 28, 2006 (“Clarke Deposition”) are attached hereto as **Exhibit “2.”**

4. True copies of excerpts of the Deposition of Joseph Donovan dated February 14, 2006 (“Donovan Deposition”) are attached hereto as **Exhibit “3.”**

5. True copies of excerpts of the Deposition of Gerald Fineberg dated April 5, 2006 (“Fineberg Deposition”) are attached hereto as **Exhibit “4.”**

6. True copies of excerpts of the Deposition of Daniel Frank dated February 16, 2006 (“Frank Deposition”) are attached hereto as **Exhibit “5.”**

7. True copies of excerpts of the Deposition of Kenneth Goldberg dated April 7, 2006 (“Goldberg Deposition”) are attached hereto as **Exhibit “6.”**

8. True copies of excerpts of the Deposition of William Langelier dated March 10, 2006 (“Langelier Deposition”) are attached hereto as **Exhibit “7.”**

9. True copies of excerpts of the Deposition of Brent Lloyd dated March 9, 2006 (“Lloyd Deposition”) are attached hereto as **Exhibit “8.”**

10. True copies of excerpts of the Deposition of Curtis Mallegni dated March 8, 2006 (“Mallegni Deposition”) are attached hereto as **Exhibit “9.”**

11. True copies of excerpts of the Deposition of Larry Needle dated March 17, 2006 (“Needle Deposition”) are attached hereto as **Exhibit “10.”**

12. True copies of excerpts of the Deposition of Joseph Polcari, Vol. I dated February 28, 2006 (“Polcari Deposition, Vol. I”) and Deposition of Joseph Polcari, Vol. II dated March 1, 2006 (“Polcari Deposition, Vol. II”) are attached hereto as **Exhibit “11.”**

13. True copies of excerpts of the Deposition of Gilbert Stone dated February 9, 2006 (“Stone Deposition”) are attached hereto as **Exhibit “12.”**

14. True copies of excerpts of the Deposition of Eric Stotz dated April 21, 2006 (“Stotz Deposition”) are attached hereto as **Exhibit “13.”**

15. A true copy of the Lease Termination Agreement, Deposition Exhibit 10, Stone Deposition, is attached hereto as **Exhibit “14.”**

16. A true copy Job Warshaw’s handwritten notes, Deposition Exhibit 25, Donovan Deposition, is attached hereto as **Exhibit “15.”**

17. A true copy of Pooling and Servicing Agreement (excerpted), Deposition Exhibit 51, Polcari Deposition, Vol. 1, is attached hereto as **Exhibit “16.”**

18. A true copy of an e-mail authorizing transfer to LNR, Deposition Exhibit 57, Polcari Deposition, Vol. 1, is attached hereto as **Exhibit “17.”**

19. A true copy of August 19, 2004 Letter from Job Warshaw to Blue Hills, Deposition Exhibit 62, Polcari Deposition, Vol. 1, is attached hereto as **Exhibit “18.”**

20. A true copy of an e-mail dated October 13, 2004 regarding \$18,590,000 loss, Deposition Exhibit 97, Deposition of Joseph Polcari, Vol. II, is attached hereto as **Exhibit “19.”**

21. A true copy of Meeting Minutes of the Canton Zoning Board, Deposition Exhibit 304, Needle Deposition, is attached hereto as **Exhibit “20.”**

22. A true copy of Fax from Lydia Chesnick to Andrew Cohen dated September 7, 1999 re. Fineberg’s securitized loans, Deposition Exhibit 322, Fineberg Deposition, is attached hereto as **Exhibit “21.”**

23. True copies of the Expert Report of Dr. Kenneth D. Gartrell, (excerpted), and the Rebuttal Report of Dr. Kenneth D. Gartrell, (excerpted), are attached hereto as **Exhibit “22.”**

24. A true copy of U.S. Tax Form 1065 for Royal Associates Realty Trust, Deposition Exhibit 363, Andelman Deposition, is attached hereto as **Exhibit “23.”**

25. True copies of a portion of Wells Fargo “Notes Maintenance,” Deposition Exhibit 393, Clarke Deposition, are attached hereto as **Exhibit “24.”**

26. A true copy of Blue Hills Operating Agreement, Deposition Exhibit 407, Deposition of Patrick Riley dated May 2, 2006 (“Riley Deposition”), is attached hereto as **Exhibit “25.”**

27. True copies of excerpts from Deposition Exhibit 98, Polcari Deposition, Vol. II, are attached hereto as **Exhibit “26.”**

28. True copies of e-mails to and from LNR employees, Deposition Exhibits 73, 74, 75 and 103, Polcari Deposition, Vol. 1 and Vol. II, are attached hereto as **Exhibit “27.”**

29. A true copy of an e-mail dated September 9, 2004 re. “New Loans for Transfer Date” Deposition Exhibit 112, Deposition of Randall Rosen dated March 2, 2006 (“Rosen Deposition”), is attached hereto as **Exhibit “28.”**

30. A true copy of Response No. 13 of CSFB 1999 – C1 Royall Street, LLC’s Answers to Blue Hills Office Park LLC, Gerald Fineberg and William Langelier’s Second Set of Interrogatories, is attached hereto as **Exhibit “29.”**

31. True copies of excerpts from the Expert Report of Richard A. Clarke, are attached hereto as **Exhibit “30.”**

32. True copies of excerpts of the Deposition of Ronald Greenspan dated May 8, 2006 (“Greenspan Deposition”) are attached hereto as **Exhibit “31.”**

Signed under the pains and penalties of perjury this 31st day of May 2006.

/s/ Meredith A. Swisher
Meredith A. Swisher

#339198 v2/14500/9985

EXHIBIT 1

David R. Andelman
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Exhibits: 358-373

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 05-CV-10506 (WJY)

BLUE HILLS OFFICE PARK LLC

Plaintiff, Defendant-in-Counterclaim

vs.

J.P. MORGAN CHASE BANK, et al.

Defendants

(Complete caption on next page)

DEPOSITION OF DAVID R. ANDELMAN

Monday, April 24, 2006, 9:30 a.m.

DLA Piper Rudnick Gray Cary US LLP

33 Arch Street, 26th Floor

Boston, Massachusetts

-----Reporter: Joan M. Cassidy, RPR, CRR-----

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David R. Andelman
Volume 1 - April 24, 2006

<p style="text-align: right;">78</p> <p>1 Blue Hill 5532-5547.)</p> <p>2 Q. Mr. Andelman, the court reporter has handed</p> <p>3 you what has been marked as Exhibit 363, which is a</p> <p>4 documents Bates-labeled Blue Hill 5532 through Blue</p> <p>5 Hill 5547. Do you recognize this document?</p> <p>6 A. (Witness reviews document.) Yes.</p> <p>7 Q. What is it?</p> <p>8 A. It's a Form 1065. It's a U.S. return of</p> <p>9 partnership income for Royall Associates Realty</p> <p>10 Trust.</p> <p>11 Q. For the year 2004?</p> <p>12 A. For the year 2004, yes.</p> <p>13 Q. Can you look at the first and second pages</p> <p>14 of Exhibit 363.</p> <p>15 A. Uh-huh.</p> <p>16 Q. They appear to me to be two copies of the</p> <p>17 same page, and I'd like to ask you if you notice</p> <p>18 anything different about them that I'm missing.</p> <p>19 A. (Witness reviews document.) No, not that I</p> <p>20 can notice.</p> <p>21 Q. Did the copy you received have two first</p> <p>22 pages?</p> <p>23 A. I don't think so.</p> <p>24 Q. Okay. Is this the entire Form 1065 for</p>	<p style="text-align: right;">80</p> <p>1 Q. Is that a sheet we've seen today?</p> <p>2 A. Yes.</p> <p>3 Q. Have you seen any other tax returns for</p> <p>4 Royall Associates Realty Trust?</p> <p>5 A. No.</p> <p>6 Q. At any time?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Have you seen any tax returns of any entity</p> <p>9 or individual other than Royall Associates in</p> <p>10 connection with your work on this matter?</p> <p>11 A. No.</p> <p>12 MR. BARNETT: Joan, I'm going to ask you</p> <p>13 to mark three exhibits separately but in the order</p> <p>14 I'm giving them to you.</p> <p>15 (Marked, Exhibits 364-366, Document</p> <p>16 entitled "Blue Hills Office Park LLC, Statement of</p> <p>17 Assets, Liabilities, and Members' Equity -- Income</p> <p>18 Tax Basis, December 31, 2002," Bates Blue Hill 5526;</p> <p>19 Document entitled "Blue Hills Office Park LLC,</p> <p>20 Statement of Assets, Liabilities, and Members'</p> <p>21 Deficit -- Modified Tax Basis, December 31, 2003,"</p> <p>22 Bates Blue Hill 5527; Document entitled "Blue Hills</p> <p>23 Office Park LLC, Statement of Assets, Liabilities,</p> <p>24 and Members' Deficit -- Income Tax Basis, December</p>
<p style="text-align: right;">79</p> <p>1 2004 for Royall Associates that you received?</p> <p>2 A. Yes, I believe it is.</p> <p>3 Q. The first page at the bottom does not show</p> <p>4 a signature. Did you review a signed copy of this</p> <p>5 return?</p> <p>6 A. Can I look at this other exhibit?</p> <p>7 Q. (Nodding.)</p> <p>8 A. (Witness reviews document.) No, I did not.</p> <p>9 Q. You understand this to be the final return</p> <p>10 for the year 2004?</p> <p>11 A. That's my understanding.</p> <p>12 Q. And your belief, if I understand your</p> <p>13 prior -- let me rephrase that. If I heard your</p> <p>14 prior testimony correctly, you believe you received</p> <p>15 this from Rutfield & Hassey; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recall when you received it?</p> <p>18 A. After March 21.</p> <p>19 Q. You used this document in connection with</p> <p>20 your first report in this matter; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. Did you see any tax workpapers from the</p> <p>23 preparation of this return?</p> <p>24 A. Just one sheet.</p>	<p style="text-align: right;">81</p> <p>1 31, 2004," Bates Blue Hill 5528.)</p> <p>2 Q. Mr. Andelman, just so we are all on the</p> <p>3 same page literally, has the reporter marked as</p> <p>4 Exhibit 364 a statement of assets, liabilities, and</p> <p>5 members' equity dated December 31, 2002?</p> <p>6 A. (Witness reviews document.) Yes.</p> <p>7 Q. And is 365 the same -- a document -- a</p> <p>8 similar document dated December 31, 2003?</p> <p>9 A. Yes, but just to clarify, these are all the</p> <p>10 Blue Hills Office Park LLC.</p> <p>11 Q. Correct, thank you. And the third she has</p> <p>12 just handed you is dated December 31, 2004?</p> <p>13 A. Yes, Exhibit 366.</p> <p>14 Q. And it's Exhibit 366. "Statement of</p> <p>15 assets, liabilities, and members' equity" is a</p> <p>16 fairly long title. How do you refer to these</p> <p>17 documents?</p> <p>18 A. Financial statement, although it's just a</p> <p>19 statement of assets and liabilities, so that would</p> <p>20 not totally be complete. You could call it a</p> <p>21 balance sheet.</p> <p>22 Q. Okay. Can we call it a balance sheet for</p> <p>23 today's purposes?</p> <p>24 A. Fine.</p>

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<p style="text-align: right;">86</p> <p>1 Goodman.</p> <p>2 Q. In connection with your work in this</p> <p>3 matter?</p> <p>4 A. Yes.</p> <p>5 Q. Did you review this document in connection</p> <p>6 with your initial report?</p> <p>7 A. No.</p> <p>8 Q. Was this document used in connection with</p> <p>9 your rebuttal report?</p> <p>10 A. Yes.</p> <p>11 Q. Did you receive it after you had submitted</p> <p>12 your initial report?</p> <p>13 A. Yes.</p> <p>14 Q. What does this document show?</p> <p>15 A. It shows a bunch of numbers. I'm not sure</p> <p>16 what you mean by "what does it show."</p> <p>17 Q. I don't want to put words in your mouth,</p> <p>18 but a few minutes ago you referred to it as the</p> <p>19 statement of a due to/from account; is that right?</p> <p>20 A. Yes.</p> <p>21 Q. What is a due to/from account?</p> <p>22 A. I believe this ties into -- this is the</p> <p>23 detail of the current asset listed as due from</p> <p>24 affiliate on the -- on Exhibit 366.</p>	<p style="text-align: right;">88</p> <p>1 receipts and disbursements back and forth. It's an</p> <p>2 open account. I -- generally speaking, in the</p> <p>3 vernacular, yes, it would be a loan. I see what you</p> <p>4 are saying.</p> <p>5 Q. It represents an amount that Blue Hills</p> <p>6 Office Park has transferred to Royall Associates?</p> <p>7 A. Yes.</p> <p>8 Q. And the first line of Exhibit 367 is</p> <p>9 capital account; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. With a \$13 million number?</p> <p>12 A. (Witness reviews document.) Uh-huh.</p> <p>13 Q. What are you referring to now, sir?</p> <p>14 A. I'm looking at the 1065 tax return.</p> <p>15 Q. What page of it?</p> <p>16 A. Page 4 -- excuse me, it's actually --</p> <p>17 because there's two page 1s, it's page 5, but it's</p> <p>18 actually page 4.</p> <p>19 Q. Showing Schedule L, M-1, and M-2?</p> <p>20 A. Yes.</p> <p>21 Q. Were you comparing that to the due from</p> <p>22 account, or why did you refer to that page of the</p> <p>23 1065 just now?</p> <p>24 A. Because the first line says "capital</p>
<p style="text-align: right;">87</p> <p>1 Q. So on Exhibit 366 under the heading</p> <p>2 "Assets," the second current asset due from</p> <p>3 affiliate is an amount of \$9,028,174?</p> <p>4 A. Yes.</p> <p>5 Q. And you believe that Exhibit 367 is the</p> <p>6 detail behind that number?</p> <p>7 A. Yes.</p> <p>8 Q. What's your basis for that belief?</p> <p>9 A. Well, for one thing, it's the same number.</p> <p>10 Secondly, that's what a due to/due from account is,</p> <p>11 so I assume even though Royall Associates doesn't</p> <p>12 say who it's due from or due to, since it's a</p> <p>13 positive number, I mean, I don't know, I just</p> <p>14 assumed it was the same number.</p> <p>15 Q. What is an amount that is due to or due</p> <p>16 from an affiliate?</p> <p>17 A. It means that Blue Hills Office Park LLC</p> <p>18 has a receivable from Royall Associates. That's how</p> <p>19 I interpret it.</p> <p>20 Q. And is that receivable a loan?</p> <p>21 A. I don't know. It doesn't necessarily have</p> <p>22 to be a loan.</p> <p>23 Q. What else could it be?</p> <p>24 A. Just a combination of interaction of</p>	<p style="text-align: right;">89</p> <p>1 account," and I was just looking to see if that's</p> <p>2 where the number came from.</p> <p>3 Q. Is the capital account reflected on page 4</p> <p>4 of the 1065?</p> <p>5 A. Excuse me?</p> <p>6 Q. Is the capital account reflected on page 4</p> <p>7 of the 1065?</p> <p>8 A. There is an amount there, yes.</p> <p>9 Q. It's different from the amount shown on</p> <p>10 Exhibit 367, isn't it?</p> <p>11 A. Yes.</p> <p>12 Q. By approximately \$200,000?</p> <p>13 A. (Witness nods.)</p> <p>14 Q. Yes?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know what the next entry is on</p> <p>17 Exhibit 367?</p> <p>18 MR. MCGLYNN: You mean after "capital</p> <p>19 account"?</p> <p>20 MR. BARNETT: After capital account,</p> <p>21 yes, thank you.</p> <p>22 A. It appears to say "cash" something or</p> <p>23 other. I don't know if that says "cash basis" or --</p> <p>24 I don't know what it is.</p>

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<p style="text-align: right;">214</p> <p>1 were any.</p> <p>2 MR. BARNETT: Well, I believe he just</p> <p>3 testified he made some revisions before he sent it</p> <p>4 out.</p> <p>5 A. Well, the way I dictate there's always</p> <p>6 drafts.</p> <p>7 Q. I think I have one more question. At the</p> <p>8 risk of redundancy, but just to make sure the record</p> <p>9 is clear, you looked earlier at Exhibit 35, which is</p> <p>10 the income and expense statement for the year ending</p> <p>11 December 31, 2003; is that right?</p> <p>12 A. Yes.</p> <p>13 Q. And you agree with me, do you not, that the</p> <p>14 2-million-dollar settlement payment does not appear</p> <p>15 on that income and expense statement?</p> <p>16 A. (Witness reviews document.) Yes.</p> <p>17 Q. Thank you.</p> <p>18 MR. BARNETT: Those are all the</p> <p>19 questions I have.</p> <p>20 MR. MCGLYNN: I just have a few,</p> <p>21 Mr. Andelman.</p> <p>22 CROSS-EXAMINATION</p> <p>23 BY MR. MCGLYNN:</p> <p>24 Q. Directing your attention to Exhibit 365 --</p>	<p style="text-align: right;">216</p> <p>1 basis, correct?</p> <p>2 A. Well, two things, reduction in basis and</p> <p>3 increase in the due from affiliate.</p> <p>4 Q. And this is continued in the balance sheet</p> <p>5 for Blue Hills Office Park for the year ended</p> <p>6 December 31, 2004, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And that's Exhibit 366. Now, sir, with</p> <p>9 respect to your opinion which is reflected in your</p> <p>10 initial report, Exhibit B, concerning the tax effect</p> <p>11 of the foreclosure, other than the information that</p> <p>12 you had to formulate the opinions set forth in your</p> <p>13 affirmative report generally and in particular</p> <p>14 Exhibit B, what other information, if it were made</p> <p>15 available to you, would allow you to determine</p> <p>16 whether the total tax amount on Exhibit B of</p> <p>17 4,918,804 is fully correct and accurate?</p> <p>18 MR. BARNETT: Objection.</p> <p>19 Q. You may answer.</p> <p>20 A. If you had copies or information as to what</p> <p>21 their 2005 return looked like reporting this and</p> <p>22 then you could do a calculation of what the 2005</p> <p>23 return would look like without reporting this</p> <p>24 income, then you could determine the true amount of</p>
<p style="text-align: right;">215</p> <p>1 and you can use mine for the sake of expediency, use</p> <p>2 my copy. This particular document is known as a</p> <p>3 balance sheet, correct?</p> <p>4 A. In the vernacular, yes.</p> <p>5 Q. Balance sheet for Blue Hills Office Park</p> <p>6 LLC, right?</p> <p>7 A. Yes.</p> <p>8 Q. And in this particular document there is</p> <p>9 a -- under the assets section there is an item -- a</p> <p>10 line item "due from affiliate"?</p> <p>11 A. Yes.</p> <p>12 Q. And that's 9,028,175, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And that's the -- in that number is the</p> <p>15 approximately \$1.950 million that was the net amount</p> <p>16 received from the EquiServe settlement, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And to the best of your knowledge, based</p> <p>19 upon your review of Exhibits 364 and 365 and 366,</p> <p>20 the balance sheet for the year ended December 31,</p> <p>21 2003, is the first year in which this particular</p> <p>22 settlement sum was reported, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And that was reported as a reduction in</p>	<p style="text-align: right;">217</p> <p>1 the additional total taxes.</p> <p>2 Q. All right. And do you have an</p> <p>3 understanding as to the status of the various 2005</p> <p>4 income tax returns for the beneficiaries of Royall</p> <p>5 Associates Realty Trust?</p> <p>6 A. I've been told that both the Royall</p> <p>7 Associates Realty Trust and all of the partners'</p> <p>8 returns are under valid extensions for both state</p> <p>9 and federal purposes.</p> <p>10 Q. And once that information that is contained</p> <p>11 in these 2005 income tax returns would be made</p> <p>12 available, what would you do with that information</p> <p>13 with respect to the dollar amounts contained on</p> <p>14 Exhibit B?</p> <p>15 A. Well, I'd confirm the amount of the gain,</p> <p>16 that shouldn't change, but the amount of the tax</p> <p>17 liability would be based upon, you know, other</p> <p>18 transactions; but you could do a -- basically a .</p> <p>19 what-if calculation, calculate the tax with this</p> <p>20 gain, and then calculate the taxes without this</p> <p>21 gain.</p> <p>22 Q. Now, sir, Exhibit B in the opinion</p> <p>23 contained in your affirmative expert report was</p> <p>24 based upon the assumption that the indebtedness was</p>

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<p style="text-align: right;">218</p> <p>1 nonrecourse to, in this case, Messrs. Langelier and 2 Fineberg, correct? 3 A. Correct. 4 Q. And assuming for the sake of this next 5 series of questions that the debt was fully recourse 6 to Messrs. Langelier and Fineberg -- would you 7 accept that assumption for me for purposes of these 8 questions? 9 A. Yes. 10 Q. Assuming that the debt was fully recourse, 11 what would be the tax effect on Messrs. Fineberg and 12 Langelier if the debt was in fact fully recourse? 13 A. With respect to the two of them, the 14 gain -- amount of gain would be -- to be recognized 15 would probably be based upon the auction price, 16 assuming that there was no other evidence that it 17 was not fair market value, and then they would -- 18 and that's the only gain they'd have to report. And 19 they would leave open the amount of income with 20 respect to the recourse portion until there was a 21 resolution of that liability. 22 Q. And as I understand it, if the debt were 23 fully recourse and Messrs. Fineberg and Langelier 24 were forced to pay some but not all of the</p>	<p style="text-align: right;">220</p> <p>1 words, a what-if calculation of taxes paid by the 2 partners after their 2005 returns are completed? 3 A. No. 4 Q. Do you know why Royall Associates and the 5 partners are under extension on their returns for 6 2005? 7 A. Why who? 8 Q. Royall Associates and the partners are 9 under extensions for their returns for 2005. 10 A. I would make the proposition that Fineberg 11 and Langelier are probably on extension all the 12 time, every year, until October. 13 Q. Why do you make that proposition? 14 A. Their returns are just too complicated. 15 MR. BARNETT: I have nothing further. 16 MR. MCGLYNN: One final question. 17 RECROSS-EXAMINATION 18 BY MR. MCGLYNN: 19 Q. In order to prepare the what-if 20 spreadsheet, you would need the information that is 21 contained in the tax returns which have not been 22 filed as of yet; is that correct? 23 A. Or prepared. Actually, what I said was 24 or -- as I understand it, or have not been prepared.</p>
<p style="text-align: right;">219</p> <p>1 deficiency, the balance that would be forgiven would 2 be taxable, correct? 3 A. Correct. 4 Q. Now, sir, you talked about an auction or 5 foreclosure sale in the context of fair market 6 value. You do not know as we sit here today whether 7 or not the auction sale yielded -- truly yielded a 8 fair market value for this particular property on 9 foreclosure, correct? 10 A. Correct. 11 MR. MCGLYNN: I have nothing further. 12 REDIRECT EXAMINATION 13 BY MR. BARNETT: 14 Q. You testified earlier, didn't you, that 15 absent evidence to the contrary, the auction price 16 is treated for tax purposes as the fair market value 17 of the property? Isn't that right? 18 A. Yes. 19 Q. And you testified earlier that you're not 20 aware of any evidence to suggest that the auction 21 price should not be treated as fair market value for 22 tax purposes; isn't that right? 23 A. Yes. 24 Q. Have you been asked to perform, to use your</p>	<p style="text-align: right;">221</p> <p>1 MR. MCGLYNN: Thank you, nothing 2 further. 3 MR. BARNETT: One more thing. It's not 4 a question. It's to reiterate our position with 5 respect to the documents concerning the witness's 6 work in 2003. It's our position we are entitled to 7 them. He did work on the very subject that is the 8 subject of one of the opinions in his rebuttal 9 report, he was aware of the fact that he did that 10 work prior to completing the rebuttal report, he was 11 aware of the substance of the advice he provided 12 prior to completing his rebuttal report, he had 13 conversation with Mr. Goldberg about it in 14 preparation for this deposition, he received a copy 15 of the letter he wrote in 2003 last Thursday as a 16 result of that conversation, and he reviewed it, by 17 his testimony today, in preparation for the 18 deposition. 19 It's clearly deeply related to the 20 opinions he's offered. He can't separate it from 21 his work in this matter. And on that basis I'm 22 going to suspend the deposition until such time as 23 we receive the 2003 letter and other documents in 24 his file related to the work he did in 2003.</p>

EXHIBIT 2

Richard A. Clarke
Volume 1 - April 28, 2006

Page 1

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Exhibits: 387-404

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 05-CV-10506 (WJY)

BLUE HILLS OFFICE PARK LLC

Plaintiff, Defendant-in-Counterclaim

vs.

J.P. MORGAN CHASE BANK, et al.

Defendants

(Complete caption on next page)

DEPOSITION OF RICHARD A. CLARKE

Friday, April 28, 2006, 9:36 a.m.

DLA Piper Rudnick Gray Cary US LLP

33 Arch Street, 26th Floor

Boston, Massachusetts

-----Reporter: Joan M. Cassidy, RPR, CRR-----

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Richard A. Clarke
Volume 1 - April 28, 2006

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1 Q. You can certainly e-mail a proposal, can't
2 you?

3 A. There are all kinds of things that you
4 could do.

5 Q. There's all sorts of ways you can make a
6 proposal to a lender without having a sit-down
7 meeting, aren't there?

8 A. The answer is yes.

9 Q. Now, you say on page 23 and 24 that LNR was
10 conflicted in this case, right?

11 A. Yes.

12 Q. That's not an opinion you were asked to
13 give, is it?

14 A. No. I mean, in a report, whether you want
15 to call them opinions or judgments, I do make
16 judgments and opinions. That was a judgment that I
17 made, and it certainly is a part of the fifth
18 opinion that I gave -- whether it's the fifth or the
19 last opinion -- that I think LNR marched to a much
20 different drummer here, at least prior to the
21 foreclosure.

22 Q. Mr. Clarke, respectfully, if you just focus
23 on my question and just answer it, we will go a lot
24 faster.

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1 MR. MCGLYNN: Objection.

2 MR. FALBY: Just wait until I have done.

3 Q. Because you are giving big, long
4 explanations to things, respectfully, I haven't
5 asked. All I am saying is that Bernkopf Goodman in
6 their engagement letter didn't ask you to give an
7 opinion about whether LNR was conflicted or not,
8 right?

9 MR. MCGLYNN: I object. You have spent
10 half the morning asking him about the engagement
11 letter and the bullet points, and I would contend
12 all of that is subsumed under the first two bullet
13 points.

14 MR. FALBY: Coaching.

15 Q. Go ahead, Mr. Clarke. You are smarter than
16 he is. You don't need to accept that answer.

17 MR. MCGLYNN: And I will readily agree
18 with that.

19 A. As I worked on this, quite frankly, I
20 wondered why LNR proceeded so quickly on the
21 foreclosure; and I told Mr. McGlynn at some point,
22 maybe on March 20 or thereabouts, that that could be
23 the subject of an additional opinion, and so I did
24 it.

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1 Q. Okay. The only point is you came up with
2 that instead of being asked to come up with it,
3 right?

4 A. Well, in our meeting on March 15, we all
5 talked about what motivated LNR to do what they did;
6 and I don't think we discussed it extensively but as
7 I read the documents, it was very clear to me that
8 they were what we call "loan-to-own servicers."

9 Q. Anyway, you say it appears LNR got cold
10 feet about a note sale, correct?

11 A. Yes.

12 Q. When do you think they got cold feet about
13 a note sale?

14 A. Sometime prior to the foreclosure.

15 Q. What facts do you rely on in support of
16 your conclusion that LNR got cold feet about a note
17 sale?

18 A. The facts -- well, just as a basis, there
19 are all kinds of documents that show that LNR had an
20 interest in this property and had an interest to own
21 it. But when I saw in the foreclosure sale that
22 instead of bidding it outright they credit-bid the
23 property and later distributed all the proceeds to
24 the pool, I asked myself why the change of heart,

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1 which was abrupt. And I don't know, but they
2 certainly did have a change of heart at the last
3 minute.

4 But up until the date of foreclosure and
5 the way it was bid in, it was very clear to me that
6 they intended to own this property and to move
7 heaven and earth to get their hands on it.

8 Q. You said they got cold feet, but you don't
9 know why?

10 A. I don't know why.

11 Q. Would you agree, based on your 37 years of
12 commercial real estate lending experience, that
13 paying property taxes is a fundamental obligation of
14 a property owner?

15 MR. MCGLYNN: Objection.

16 A. It's also the fundamental obligation of a
17 lender that wants to preserve their collateral.

18 Q. But you have to answer my question,
19 Mr. Clarke.

20 A. It's an obligation of all the parties in
21 the transaction that the property taxes be paid.

22 Q. Would you agree it's a fundamental
23 obligation of a property owner to pay the real
24 estate taxes on the property?

26 (Pages 101 to 104)

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42 (Pages 162 to 165)

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<p style="text-align: right;">162</p> <p>1 exhibit these documents that Mr. Clarke handed me</p> <p>2 that pertain to taxes in the reserve accounts.</p> <p>3 MR. MCGLYNN: Are these your original --</p> <p>4 are these part of your file, Dick?</p> <p>5 THE WITNESS: They are.</p> <p>6 MR. MCGLYNN: Then can we have a</p> <p>7 stipulation, Bruce, that you can mark these but</p> <p>8 substitute copies for the originals and return them</p> <p>9 to Dick?</p> <p>10 MR. FALBY: Sure.</p> <p>11 MR. MCGLYNN: Thanks.</p> <p>12 (Marked, Exhibit 393, Multiple documents</p> <p>13 entitled "Notes Maintenance").</p> <p>14 Q. Do you understand from your review of the</p> <p>15 record, Mr. Clarke, that what normally happened with</p> <p>16 respect to taxes is that the money to pay the taxes</p> <p>17 went into the borrower's lockbox account in</p> <p>18 Massachusetts and then was swept to Wells Fargo's</p> <p>19 account?</p> <p>20 A. Well, that's how it was supposed to work.</p> <p>21 The documents that you have just marked I think show</p> <p>22 you that there was a variety of ways that the tax</p> <p>23 payment ended up being made during the course of the</p> <p>24 relationship.</p>	<p style="text-align: right;">164</p> <p>1 movement of funds between escrow accounts, and I</p> <p>2 don't know what tran 40 is, but that's quite</p> <p>3 contrary to the way you told me that this was</p> <p>4 supposed to be swept from an account into the tax</p> <p>5 reserve account.</p> <p>6 Just again, I can't tell from the codes</p> <p>7 here, nor did I bother to, all I know is as we go</p> <p>8 through these, you will see there is inconsistent</p> <p>9 handling of the various escrow accounts and how</p> <p>10 payments were made.</p> <p>11 The next document is WF --</p> <p>12 Q. Hand them to me as you finish, will you?</p> <p>13 A. -- WF 01696. Here the borrower wired funds</p> <p>14 instead of having them swept, intended them for the</p> <p>15 tax escrow account, it went into a different reserve</p> <p>16 account, and now the borrower's authorizing the</p> <p>17 transfer of funds from whatever that reserve account</p> <p>18 was into the tax escrow account.</p> <p>19 I have WF 01702.</p> <p>20 Q. Let me just ask you to pause. You will be</p> <p>21 able to finish. But do you understand that the</p> <p>22 lockbox reserve refers to the holding account at</p> <p>23 Wells Fargo and not to a reserve account?</p> <p>24 A. It may well, it may well. I'm just looking</p>
<p style="text-align: right;">163</p> <p>1 Q. Can you point to any particular document</p> <p>2 which indicates to you that the monies to pay the</p> <p>3 taxes came out of any account other than the tax</p> <p>4 reserve account? And I'm specifically interested in</p> <p>5 any document that shows the tax money coming out of</p> <p>6 either the replacement reserve or the base leasing</p> <p>7 reserve or the cash flow reserve.</p> <p>8 A. As I said in my report, there is an</p> <p>9 inference from these documents that that may have</p> <p>10 happened, and for example it says here --</p> <p>11 Q. On what page? Read the Bates stamp at the</p> <p>12 bottom.</p> <p>13 A. You have to take these in a sequence. And</p> <p>14 let me explain how these were pulled before I</p> <p>15 answer.</p> <p>16 Q. That's fine. All I am saying is, when you</p> <p>17 refer to a page, please cite the document number in</p> <p>18 the bottom right-hand corner, please.</p> <p>19 A. Okay. Would you prefer I do that instead</p> <p>20 of dates?</p> <p>21 Q. Yes.</p> <p>22 A. Okay. Let's just walk through these and</p> <p>23 see what they say, because again, you have to take</p> <p>24 this as a sequence. I have WF 01693. There was a</p>	<p style="text-align: right;">165</p> <p>1 at these in their entirety, and so that's why I made</p> <p>2 testimony -- provided the testimony as well as the</p> <p>3 inference in my report that these accounts were not</p> <p>4 consistently handled either in accordance with the</p> <p>5 agreement or in actual practice.</p> <p>6 Q. By "these accounts" what are you talking</p> <p>7 about?</p> <p>8 A. The various reserve accounts and the</p> <p>9 methodology used to fund them. I have WF 01702.</p> <p>10 Q. Okay.</p> <p>11 A. Here's one which, again, I will just read</p> <p>12 what it says. "Gil Stone called" -- and I will</p> <p>13 leave out some of the interim stuff. "I told him</p> <p>14 according to our note pads the installment was</p> <p>15 already paid. He states he did not pay the last</p> <p>16 installment. I called the assessor again, and they</p> <p>17 show only one check being received, Check 1224.</p> <p>18 This is not a manual check. We paid with</p> <p>19 Check 16065. He is faxing his tax bill and a letter</p> <p>20 granting permission to take money from, quote, one</p> <p>21 of his accounts for the tax shortage."</p> <p>22 Now, I don't know if one of those</p> <p>23 accounts was the insurance account or what it might</p> <p>24 have been, but -- it just says one of his accounts;</p>

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<p style="text-align: right;">166</p> <p>1 so again, I don't know which account was tapped, but</p> <p>2 I'm trying to answer the question that was posed</p> <p>3 this morning and showing you these things for</p> <p>4 inconsistency.</p> <p>5 Now, here's one, WF 01703. You</p> <p>6 postulated that the way this worked is that they</p> <p>7 just went ahead and swept funds, as you said, into</p> <p>8 the lockbox account and then allocated them; and</p> <p>9 here's one -- I will just read it. "Received</p> <p>10 permission" -- well, again, this may not be an</p> <p>11 inconsistency. "Received permission from borrower</p> <p>12 and M. Gremore to transfer 101,000," in round</p> <p>13 amount, "from lockbox sweep to tax escrow for</p> <p>14 shortage of May 1, 2002 installment."</p> <p>15 Now, this is on April 24; and again, I</p> <p>16 just don't know why there would be a shortage or</p> <p>17 whether it's just timing, but I'm just following</p> <p>18 through in a sequence of these as I read them</p> <p>19 originally.</p> <p>20 And by the way, I didn't pull all the</p> <p>21 notes maintenance; I just pulled these as indicative</p> <p>22 of what I was seeing when I reviewed the documents.</p> <p>23 Q. Okay. I'm not going to take the time to</p> <p>24 have you go through the rest of them because I won't</p>	<p style="text-align: right;">168</p> <p>1 base leasing escrow fund, or the cash flow leasing</p> <p>2 escrow fund?</p> <p>3 A. Not the ones I have here, but there may be</p> <p>4 some reference to those in the documents. These are</p> <p>5 just samples.</p> <p>6 Q. My question is, did you see any reference</p> <p>7 in these documents that we have marked as Exhibit</p> <p>8 339 to any of the replacement escrow fund, the base</p> <p>9 leasing escrow fund, or the cash flow leasing escrow</p> <p>10 fund?</p> <p>11 MR. MCGLYNN: Objection.</p> <p>12 A. Again, my answer is no, but I reserve the</p> <p>13 right to check other ones because these are just</p> <p>14 samples.</p> <p>15 Q. That's not my question.</p> <p>16 MR. MCGLYNN: Bruce, he's answered the</p> <p>17 question.</p> <p>18 Q. I don't know why you insist on embroidering</p> <p>19 your answers with your advocacy. I think the record</p> <p>20 will reflect why.</p> <p>21 MR. MCGLYNN: You have asked it three</p> <p>22 times, he has answered it three times the best he</p> <p>23 can. The fact that you don't like the answer --</p> <p>24 MR. FALBY: It's not really the best he</p>
<p style="text-align: right;">167</p> <p>1 finish today if we do, so just hand them to me.</p> <p>2 They say what they say.</p> <p>3 MR. MCGLYNN: Are we going to have all</p> <p>4 of those marked as one exhibit?</p> <p>5 MR. FALBY: Yes.</p> <p>6 MR. MCGLYNN: And that exhibit number</p> <p>7 again is what?</p> <p>8 MR. FALBY: 393.</p> <p>9 MR. MCGLYNN: 393? Thank you.</p> <p>10 Q. Did you see any reference in any of these</p> <p>11 documents explicitly to either a replacement escrow</p> <p>12 fund, a base leasing escrow fund, or a cash flow</p> <p>13 leasing escrow fund?</p> <p>14 A. I remember seeing references to the</p> <p>15 insurance fund.</p> <p>16 Q. That was not my question.</p> <p>17 A. Okay. I'm doing the best I can, you know,</p> <p>18 having read these things several months ago.</p> <p>19 Q. No, I understand. I just wish you would</p> <p>20 answer my question rather than a different question.</p> <p>21 Did you see --</p> <p>22 MR. MCGLYNN: Objection.</p> <p>23 Q. Did you see any reference in these</p> <p>24 documents to any of the replacement escrow fund, the</p>	<p style="text-align: right;">169</p> <p>1 can.</p> <p>2 Q. I said it this morning. I will say it</p> <p>3 again. We will get done a lot faster if in answer</p> <p>4 to my questions you don't editorialize yourself,</p> <p>5 because you do in almost every instance; and the</p> <p>6 inference is inescapable that you are an advocate</p> <p>7 and you are being paid to give answers that are</p> <p>8 helpful in your view to the people who have hired</p> <p>9 you and who are paying you, which is fine. But in</p> <p>10 answer to my questions, please just answer my</p> <p>11 question, because I have to ask it again and again</p> <p>12 until you just answer it, and it wastes a lot of</p> <p>13 time.</p> <p>14 MR. MCGLYNN: There is no question</p> <p>15 pending, Dick. You don't have to even respond to</p> <p>16 that. And quite frankly, it's inappropriate,</p> <p>17 unprofessional, and just simply incorrect.</p> <p>18 Q. *Did you conclude from this record that the</p> <p>19 borrower made a practice during the course of this</p> <p>20 loan of sending Wells Fargo money for the real</p> <p>21 estate tax payments towards the end of the month</p> <p>22 preceding the due date of the taxes?</p> <p>23 MR. MCGLYNN: Objection as to the form.</p> <p>24 Joan, can you read that back to me, please.</p>

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Page 205	<p>1 A. I'm doing the best I can, but I would like 2 to have at least as truthful an answer as I can give 3 you. 4 Q. I appreciate that, but a truthful answer 5 doesn't in every instance require an explanation. 6 My question -- 7 A. You have gotten a fair number of yeses and 8 noes. 9 Q. Okay, well, give me some more. 10 MR. MCGLYNN: Just say no. 11 (Laughter.) 12 Q. The loan pool into which this loan 13 eventually went wasn't even created at the time the 14 loan was made, correct? 15 A. I'm not prepared to say that. It may have 16 been in the process of being created. I mean, it's 17 a pretty extensive pool, so I'm not prepared to say 18 whether it was or not. It had to have been in 19 process. 20 Q. In any event, the pooling and servicing 21 agreement had not been signed up as of the date that 22 this loan was made by Credit Suisse to Blue Hills, 23 right? 24 A. That is correct.</p>	Page 207	<p>1 A. Not to my knowledge. 2 Q. Did the borrower at any time up to November 3 19, 2004, see the contents of this PSA? 4 A. That I don't know. 5 Q. Did the borrower ever rely in any way on 6 the provisions of this PSA? 7 MR. MCGLYNN: Objection. 8 A. Referring to this PSA specifically, not to 9 my knowledge. 10 Q. Does a CMBS servicer in your view owe a 11 duty to the borrower of a loan in the pool to 12 service that loan in accordance with the servicing 13 standard set forth in the PSA? 14 A. Yes. 15 Q. And your opinion here about Wells Fargo and 16 LNR's failure to comply with the servicing standard 17 assumes that there is such an obligation, correct? 18 A. I have testified repeatedly that there's a 19 duty by anybody administering a loan to act in 20 accordance with industry standards, and I think the 21 PSA is one indication of what those standards might 22 be. 23 THE WITNESS: (To the reporter) Did you 24 get that, "has a duty"?</p>
Page 206	<p>1 Q. So obviously, the borrower didn't rely on 2 the contents of the pooling and servicing agreement 3 when it executed the loan documents, correct? 4 A. Not on this particular pooling and 5 servicing agreement. 6 Q. And did the borrower, do you know, have any 7 awareness at all when it borrowed money from Credit 8 Suisse as to what the standard pooling and servicing 9 agreement said? 10 A. Yes. 11 Q. What do you base that on? 12 A. First of all, it was obvious from the 13 closing documents that this was going into a conduit 14 program. Secondly, they were experienced real 15 estate people. And, thirdly, as Mr. Greenspan said, 16 they knew or should have known the general terms and 17 conditions that apply to conduit loans. 18 Q. Did the borrower ever obtain a copy of this 19 PSA -- I'm going to refer to the pooling and 20 servicing agreement as "PSA"; is that okay, 21 Mr. Clarke? 22 A. Yes, sir. 23 Q. Did the borrower here ever obtain a copy of 24 the PSA?</p>	Page 208	<p>1 Q. I take it you view the servicing standard 2 in the PSA as a sort of industry standard that sets 3 a code of conduct for services? 4 A. I've seen the exact same language in other 5 servicing agreements, notably Wachovia, and there's 6 only a limited number of servicers, so I would 7 believe that it's fairly standard. 8 Q. Have you seen any pooling and servicing 9 agreements other than the one in this case and those 10 used by Wachovia? 11 A. I've seen them, but I just can't recall 12 which ones they were. 13 Q. Under what circumstances or contexts did 14 you see them? 15 A. Well, if I recall, when I say Wachovia, 16 that also would include the predecessor, First 17 Union. And, for example, as an advisor to Harold 18 Brown for over a decade, Harold refinanced over a 19 third of his properties out of bankruptcy using 20 conduit programs primarily with First Union, so I'm 21 familiar with First Union and then Wachovia. 22 I have other clients that also, you 23 know, have basically taken advantage of conduit 24 situations; and so I have seen some other</p>

EXHIBIT 3

Exhibits: 1-32 Volume 1, Pages 1-273

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 05-CV-10506 (WJY)

BLUE HILLS OFFICE PARK LLC

Plaintiff, Defendant-in-Counterclaim

vs.

J.P. MORGAN CHASE BANK, et al.

Defendant

(Complete caption on next page)

CONFIDENTIAL 30(b)(6) DEPOSITION OF BLUE HILLS

OFFICE PARK LLC by JOSEPH A. DONOVAN

Tuesday, February 14, 2006, 9:32 a.m.

DLA Piper Rudnick Gray Cary US LLP

One International Place, 21st Floor

Boston, Massachusetts

----- Reporter: Joan M. Cassidy, RPR, CRR -----

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C O N F I D E N T I A L

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1 at Inn America were now at Fine Hotels, including
2 the human resource director, Dennis Hatch.
3 **Q. Anybody else?**
4 A. Yes. There was probably a half a dozen
5 people.
6 **Q. Can you name them, please.**
7 A. Pete Phillips, Mike Attenborough, Carol
8 Falvey, Mary Doyle.
9 **Q. Anybody else?**
10 A. Off the top of my head, that's all I can
11 think of.
12 **Q. What did you do as controller of Fine**
13 **Hotels Corp.?**
14 A. I was in charge of the day-to-day
15 accounting for the hotels.
16 **Q. How many hotels did Fine Hotels Corp. own**
17 **at that point?**
18 A. I'm guessing about eight or eleven hotels.
19 **Q. Did you have people reporting to you when**
20 **you were controller of Fine Hotels Corp.?**
21 A. Yes, the controllers for each property
22 would report to me.
23 **Q. How long did you have that job?**
24 A. For about three years.

27

1 **Q. Through 1995?**
2 A. That's approximately right.
3 **Q. Then what happened?**
4 A. I became CFO of both Fine Hotels and
5 Fineberg Management.
6 **Q. And what's the relationship between Fine**
7 **Hotels and Fineberg Management?**
8 A. They're both owned by Jerry Fineberg.
9 **Q. What does Fineberg Management do?**
10 A. Fineberg Management manages real estate
11 properties.
12 **Q. Owned by whom?**
13 A. Owned by Jerry Fineberg.
14 **Q. What types of properties?**
15 A. Residential apartment buildings, office
16 buildings, and retail space.
17 **Q. Have you been CFO of Fine Hotels and**
18 **Fineberg Management since 1995?**
19 A. Approximately, yes.
20 **Q. Have you picked up any additional titles**
21 **along the way?**
22 A. No.
23 **Q. Are your duties and responsibilities in**
24 **that position the same today as they were when you**

28

1 **started?**
2 A. I also do most of the development as far as
3 looking for hotels.
4 **Q. When did you start doing that?**
5 A. Probably about 1998.
6 **Q. Do you do anything else?**
7 A. No.
8 **Q. Can you describe what you do as the CFO,**
9 **that is, what duties and responsibilities that**
10 **position entails?**
11 A. I'm responsible for the day-to-day
12 accounting for the different entities. I'm
13 responsible for looking at and evaluating
14 prospective hotel deals. I look at and evaluate in
15 conjunction with Larry Needle and Dan Frank any kind
16 of residential, retail or office building deals.
17 **Q. Do you have any other duties and**
18 **responsibilities?**
19 A. No, that pretty much encompasses it.
20 **Q. During the period 1999 through 2004, did**
21 **you have the same duties and responsibilities as you**
22 **have just described?**
23 A. Yes.
24 **Q. Who reported to you during that period?**

29

1 A. Gil Stone from Fineberg Management, George
2 Salgado from Fine Hotels, Carol Falvey was my
3 administrative assistant.
4 **Q. Anyone else?**
5 A. No. Anyone else would have been reporting
6 to one of those two, first two that I mentioned.
7 **Q. I take it George Salgado was the director**
8 **of accounting for Fine Hotels?**
9 A. Yes, he is.
10 **Q. During that same period, 1999 through 2004,**
11 **approximately how many properties was Fineberg**
12 **Management managing?**
13 A. On the residential side we had roughly 1500
14 apartment units, we had three office buildings, and
15 we had three or four retail units.
16 **Q. And were each of the properties owned by a**
17 **different single-purpose entity such as Blue Hills**
18 **Office Park LLC?**
19 A. Many of them were but not all.
20 **Q. Approximately how many single-purpose**
21 **entities were there during that five-year period,**
22 **1999 through 2004, whose properties Fineberg**
23 **Management or Fine Hotels managed?**
24 A. Ballpark, between 30 and 50.

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C O N F I D E N T I A L

<p style="text-align: right;">30</p> <p>1 Q. Who owned properties managed by Fineberg 2 Management or Fine Hotels that were not owned by a 3 single-purpose entity? 4 A. There were condos that were owned by the 5 same entity, multiple condos in different buildings. 6 Q. As CFO have you had dealings with lenders 7 on various properties? 8 A. Yes, I have. 9 Q. To what extent? 10 A. My job is to deal with lenders on just 11 about any property that if there arises a time for 12 refinancing -- any problems that might develop that 13 cannot be handled by either Gil Stone or George 14 Salgado. 15 Q. What kind of problems do you typically get 16 involved with with lenders? 17 A. Very few problems, actually. Most of the 18 time it's the refinancing end of it. 19 Q. What problems have developed with lenders 20 over the years that Gil or George couldn't handle? 21 A. If there comes a time we're having trouble 22 making a mortgage payment. 23 Q. As to what properties has that happened? 24 A. That's happened to a few hotel properties,</p>	<p style="text-align: right;">32</p> <p>1 on each of those projects? 2 A. On Sturbridge and Lancaster, it was Lennar 3 Partners. On Harrisburg, it was GMAC. On 4 Boxborough and Worcester, it was also GMAC. 5 Q. When was the Sturbridge hotel foreclosure? 6 A. Off the top of my head, I don't remember 7 the date. 8 Q. It was prior to the Blue Hills foreclosure, 9 wasn't it? 10 A. Yes, it was. 11 Q. When was the Lancaster hotel foreclosure? 12 A. Around the same time as the Sturbridge 13 foreclosure. 14 Q. Who at Lennar Partners did you deal with? 15 A. Chris Brown. 16 Q. Anyone else? 17 A. No. 18 Q. What other lenders have you dealt with in 19 connection with your duties as CFO? 20 A. A lot of my properties are financed by the 21 local banks. I deal quite a bit with all the local 22 bankers around here. GEMSA, GMAC. 23 Q. What's GEMSA? 24 A. That's GE combined with somebody else, and</p>
<p style="text-align: right;">31</p> <p>1 that the market changed and they could no longer 2 meet their mortgage payments, especially after 9/11. 3 Q. Were there other properties where you had 4 trouble making the mortgage payment other than those 5 few hotels? 6 A. During that time period we were struggling 7 to make a lot of mortgage payments. 8 Q. So therefore, did you have -- 9 A. Yeah, we didn't -- 10 Q. Therefore, did you have fairly extensive 11 contact with lenders? 12 A. I have fairly extensive contact with 13 lenders all the time. I'm constantly talking to 14 lenders. 15 Q. Other than the Blue Hills Office Park, have 16 any of the properties managed by Fineberg Management 17 or Fine Hotels been foreclosed upon while you've 18 been CFO? 19 A. Yes. 20 Q. Can you name them, please? 21 A. The Sturbridge hotel, the Lancaster hotel, 22 the Harrisburg hotel, the Boxborough hotel, and the 23 Worcester hotel. 24 Q. Can you tell me what lender you dealt with</p>	<p style="text-align: right;">33</p> <p>1 they formed the name GEMSA, you know. You may know 2 better than I do. 3 Q. Have you dealt with any other lenders? 4 A. CS First Boston, Heller Financial. 5 Q. Any others? 6 A. Off the top of my head, I think we've got 7 most of them, anyway. 8 Q. Can you give me the names of any other 9 properties other than the foreclosed hotels that 10 have had trouble making their mortgage payments? 11 A. Not off the top of my head, no. 12 Q. In your dealings with lenders, do you have 13 occasion to read loan documents? 14 A. Yes. 15 Q. Do you also help negotiate loan documents 16 when the properties managed by Fineberg Management 17 or Fine Hotels take out mortgage loans? 18 A. I'm not a lawyer. I might help work on the 19 idea but not the terms themselves. 20 Q. Once a loan is made, do you typically 21 review the loan documents? 22 A. Somewhat, yes. 23 Q. When the property gets into trouble and is 24 having trouble making loan payments, do you</p>

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C O N F I D E N T I A L

<p>78</p> <p>1 knowledge other than that gleaned from discussions</p> <p>2 with counsel, please answer. Otherwise, I'm</p> <p>3 instructing you not to answer.</p> <p>4 A. I'm not answering that.</p> <p>5 Q. Did you understand that the garage would</p> <p>6 have a negative impact on the traffic flow?</p> <p>7 A. There was a possibility that could happen,</p> <p>8 yes.</p> <p>9 Q. Did you have an understanding that the</p> <p>10 garage would interfere with the sight lines from the</p> <p>11 Blue Hills Office Park?</p> <p>12 MR. MCGLYNN: Same objection, same</p> <p>13 instruction.</p> <p>14 A. I didn't see any sight line problems.</p> <p>15 Q. Did you understand that the garage would</p> <p>16 partially block the view of the Blue Hills Office</p> <p>17 Park from Route 95?</p> <p>18 A. There was a possibility it could partially</p> <p>19 block it, yes.</p> <p>20 Q. Did you view the possibility that the</p> <p>21 garage would partially block the view of Blue Hills</p> <p>22 Office Park from Route 95 as having a negative</p> <p>23 impact on the office park?</p> <p>24 A. In my opinion, no.</p>	<p>80</p> <p>1 Hills Office Park to park in?</p> <p>2 A. Yes.</p> <p>3 Q. At some point did you learn that EquiServe</p> <p>4 had entered into a purchase and sale agreement to</p> <p>5 buy Blue View, the property across the street from</p> <p>6 the Blue Hills Office Park?</p> <p>7 A. Yes.</p> <p>8 Q. When did you learn that?</p> <p>9 A. I don't know. I don't remember the date.</p> <p>10 Q. What's your understanding of what an</p> <p>11 abutter is and why an abutter has the right to</p> <p>12 appeal a special permit given to a property?</p> <p>13 MR. MCGLYNN: Again, same objection,</p> <p>14 same instruction, but if you have a personal</p> <p>15 understanding, please answer.</p> <p>16 A. My personal understanding is if you are an</p> <p>17 abutter and something is different from what is set</p> <p>18 out in the bylaws of the town, that you get notified</p> <p>19 that there's a possibility that there may be a</p> <p>20 change.</p> <p>21 Q. And you understand that an abutter has the</p> <p>22 right to raise objections to something going on</p> <p>23 nextdoor that someone across town can't?</p> <p>24 A. Yes.</p>
<p>79</p> <p>1 Q. Why not?</p> <p>2 A. Because you could still see it no matter</p> <p>3 what, and I don't know if it's all that important to</p> <p>4 be able to see it from Route 95.</p> <p>5 Q. You've heard leasing people tell you over</p> <p>6 the years that it's a benefit to a property to be</p> <p>7 visible from a major highway, correct?</p> <p>8 A. I really don't deal with leasing people on</p> <p>9 a normal basis.</p> <p>10 Q. Well, you understand that it's generally</p> <p>11 perceived as a positive if an office park is visible</p> <p>12 from a nearby major highway, correct?</p> <p>13 A. Okay, it would be. In this case, though,</p> <p>14 the building was always going to be visible.</p> <p>15 Q. Notwithstanding the potential negative</p> <p>16 impact on traffic and the possible partial</p> <p>17 obstruction of the view of the building from Route</p> <p>18 95, did you still consider the parking garage, all</p> <p>19 in all, a positive development for Blue Hills Office</p> <p>20 Park?</p> <p>21 MR. MCGLYNN: Objection as to form.</p> <p>22 A. In my personal opinion, yes.</p> <p>23 Q. Again, that's because you assumed that it</p> <p>24 would be available for visitors and tenants of Blue</p>	<p>81</p> <p>1 Q. And that's because their property abuts the</p> <p>2 property affected by the special permit?</p> <p>3 A. That's my understanding, yes.</p> <p>4 Q. Isn't it a fact that the proposed parking</p> <p>5 garage was going to obstruct views from the Blue</p> <p>6 Hills Office Park from the southwest?</p> <p>7 A. I don't know.</p> <p>8 Q. You didn't understand that that was the</p> <p>9 case?</p> <p>10 A. No. That's the first time I've heard</p> <p>11 somebody phrase it like that.</p> <p>12 MR. FALBY: Let's mark the next exhibit,</p> <p>13 which is the purchase and sale agreement between DST</p> <p>14 Realty and National Development.</p> <p>15 (Marked, Exhibit 19, Purchase and sale</p> <p>16 agreement between DST Realty and National</p> <p>17 Development.)</p> <p>18 Q. Have you seen Exhibit 19 before?</p> <p>19 A. (Witness reviews document.)</p> <p>20 MR. MCGLYNN: Before we get into this, I</p> <p>21 notice that this is confidential. Is this -- this</p> <p>22 is some of the documentation that was produced</p> <p>23 subject to the confidentiality arrangement. I don't</p> <p>24 have a copy of that in front of me, but perhaps we</p>

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1 should have this portion of the transcript and the
2 exhibit impounded subject to that order.
3 MR. FALBY: Well, let's make it subject
4 to the order, whatever it says.
5 MR. MCGLYNN: That's fine. I will agree
6 to it. Okay. I don't have a specific memory as to
7 whether or not we had to impound things, but I will
8 make my comment subject to whatever the terms of
9 that order are.
10 MR. FALBY: Everybody remember when we
11 get off this to undo that designation because
12 usually when that happens, the rest of the
13 transcript remains confidential.
14 MR. MCGLYNN: No, I understand. I'll do
15 my best to assist.
16 A. I'm sorry, what was the question?
17 **Q. Have you seen Exhibit 19 before?**
18 A. (Witness reviews document.) No, I have not.
19 **Q. Just so you know, DST Realty is the parent**
20 **of EquiServe as we understand it. Does that ring**
21 **any bells?**
22 A. No, I had not seen anything with DST.
23 **Q. So when you learned that EquiServe had**
24 **entered into a purchase and sale agreement to buy**

83

1 **Blue View, you didn't see the actual agreement?**
2 A. No, I did not.
3 **Q. Did you -- strike that. How did you learn**
4 **of it?**
5 A. I imagine it was in conversation.
6 **Q. With whom?**
7 A. With somebody in the office.
8 **Q. Do you remember --**
9 A. I don't remember who offhand.
10 **Q. Do you remember when the conversation was?**
11 A. No.
12 **Q. Was it at or around the same time that**
13 **EquiServe was applying for the special permit for**
14 **the garage?**
15 A. It may have been. I don't know.
16 **Q. Did you learn at that time that the**
17 **purchase was conditioned on the town of Canton**
18 **approving the construction of a parking garage at**
19 **Blue View?**
20 A. Yes.
21 **Q. Did you learn of the purchase and sale**
22 **agreement and of that condition prior to the point**
23 **that Blue Hills appealed the garage special permit?**
24 A. I don't know.

84

1 **Q. Was it at or around that time?**
2 A. I really don't know.
3 **Q. At some point did you learn that the town**
4 **of Canton had granted the special permit?**
5 A. Yes.
6 **Q. Did you ever see the decision granting the**
7 **permit?**
8 A. No, I did not.
9 **Q. Did you discuss it with anybody?**
10 A. No.
11 **Q. How did you learn of it?**
12 A. Somebody in the office must have told me.
13 **Q. Do you remember any specifics?**
14 A. No.
15 **Q. Obviously, you've already told me, Blue**
16 **Hills filed a lawsuit appealing the special permit**
17 **grant, correct?**
18 A. Yes.
19 **Q. Did you see that complaint before it was**
20 **filed?**
21 A. No.
22 **Q. Did you ever see that complaint?**
23 A. No.
24 **Q. Do you know what it says?**

85

1 A. No.
2 **Q. Did anybody consult with you in the process**
3 **of drafting that complaint?**
4 A. No.
5 **Q. Did any of the attorneys at Bernkopf talk**
6 **to you about that complaint?**
7 MR. MCGLYNN: Yes or no.
8 A. Yes.
9 **Q. When, at the time, before it was filed?**
10 A. It must have been at the time.
11 **Q. Who in particular?**
12 A. It probably would have been Ken Goldberg.
13 **Q. Did any other attorney at Bernkopf involved**
14 **with the complaint talk to you?**
15 A. No.
16 **Q. Did you have any understanding about what**
17 **the complaint said?**
18 A. No.
19 **Q. Who made the decision to file the complaint**
20 **appealing the special permit grant?**
21 A. I don't know.
22 (Discussion off the record.)
23 MR. FALBY: Let's stop with the
24 confidentiality. Let's mark as the next exhibit a

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26 (Pages 98 to 101)

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1 A. Okay.

2 Q. You understood that Wells Fargo was
3 servicing the loan for the actual lender, whoever
4 that was, right?

5 A. Right.

6 Q. And you understood Credit Suisse had
7 actually assigned the loan to somebody so that it
8 was no longer the lender, right?

9 A. I had no idea who was the lender, though.

10 Q. No, I'm just saying --

11 A. I knew Wells Fargo --

12 MR. MCGLYNN: One at a time.

13 Q. You understood that Credit Suisse was out
14 of the picture, right?

15 A. Yes.

16 Q. And they had assigned the loan to somebody;
17 you just didn't know who, right?

18 A. Right.

19 Q. And you understood whoever that was, Wells
20 Fargo was servicing the loan for them, right?

21 A. Right.

22 Q. And if the loan got in trouble, there would
23 be some special servicer involved, whether it was
24 Lennar or somebody else, right?

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1 street?

2 A. At the time I think I knew they were moving
3 across the street. I don't know if I knew they were
4 buying it or leasing it or what. I knew they were
5 moving.

6 Q. Did you understand at the time of the
7 settlement that as a result of the settlement you
8 weren't going to be slowing things down anymore and
9 EquiServe in fact would be leaving Blue Hills Office
10 Park for sure?

11 A. Yes.

12 Q. And indeed you understood that as part of
13 the settlement, EquiServe signed a lease termination
14 agreement confirming that they would unequivocally
15 be leaving the space as of July 31, 2004, correct?

16 A. Yes.

17 Q. So that the settlement, you understood at
18 the time, eliminated any possibility of EquiServe
19 staying in the office park that you had hoped might
20 be accomplished by the filing of the special permit
21 appeal, correct?

22 A. Yes.

23 MR. FALBY: I'm going to ask some
24 questions about the payment, so I assume we are

99

1 A. Right.

2 Q. So in any event, you didn't consider in the
3 summer of '03 whether the fact of the settlement
4 should be communicated to Wells Fargo or the lender,
5 right?

6 A. No.

7 Q. I'm making this distinction between Wells
8 Fargo and the lender. I guess it's more accurate to
9 say that any communications you had with the lender
10 would be with Wells Fargo at that point, right?

11 A. That's correct.

12 Q. Did you have anything to do with the
13 drafting of the settlement agreement or any of the
14 other documents that documented the settlement?

15 A. No, I did not.

16 Q. Did you read them?

17 A. No.

18 Q. And did you understand at the time that the
19 settlement removed any impediment to approval of the
20 garage by the town of Canton?

21 A. Yes.

22 Q. And did you understand at the time that the
23 settlement cleared the way for EquiServe to buy the
24 property across the street and move across the

101

1 still confidential?

2 MR. MCGLYNN: We went out and now we
3 are --

4 MR. FALBY: Let's go back into
5 confidentiality plan or mode.

6 Q. Mr. Donovan, have you ever read the
7 granting clauses of the mortgage that is Exhibit C
8 to the second amended complaint?

9 A. I can't say that I have, no.

10 Q. That's not part of the mortgage that you
11 read at the time of the loan back in 1999?

12 A. To the best of my knowledge, I don't
13 remember reading that, no.

14 Q. You've already confirmed that Blue Hills
15 received a \$2 million payment in connection with the
16 settlement of the special permit appeal, correct?

17 A. Yes.

18 Q. What was that for?

19 A. I'm sorry?

20 Q. What was that payment for?

21 A. Well, the settlement of 2 million was so
22 they could move forward with building their garage
23 and completing their office building.

24 Q. And why did Blue Hills get 2 million bucks?

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<p>106</p> <p>1 without him knowing of it -- strike that -- without</p> <p>2 him accounting for it?</p> <p>3 MR. MCGLYNN: You are asking him if he</p> <p>4 saw that in the deposition transcript?</p> <p>5 MR. FALBY: Yes.</p> <p>6 A. I didn't see that in the deposition</p> <p>7 transcript.</p> <p>8 Q. Are you aware of any other instance in</p> <p>9 which one of the single-purpose entities whose</p> <p>10 property Fineberg Management managed received a</p> <p>11 large amount of money, whether through a settlement</p> <p>12 or some other event, that you didn't account for in</p> <p>13 the books and records of the entity?</p> <p>14 A. If it came to the entity, I'd make the</p> <p>15 accounting for it.</p> <p>16 Q. Have you ever heard of another instance</p> <p>17 like this settlement where there was some big amount</p> <p>18 of money that was supposed to be paid that didn't</p> <p>19 actually hit the books and records of the entity?</p> <p>20 A. Not that I'm aware of.</p> <p>21 MR. MCGLYNN: I don't want to interrupt</p> <p>22 your thought. It's almost 12:30. Is this a good</p> <p>23 time to break or -- I know you mentioned you wanted</p> <p>24 to break at 12:15, but I didn't want to interrupt</p>	<p>108</p> <p>1 AFTERNOON SESSION (1:17 p.m.)</p> <p>2 (Mr. Polcari entered the room.)</p> <p>3 BY MR. FALBY:</p> <p>4 Q. Mr. Donovan, did you have any discussions</p> <p>5 with Gil Stone about the settlement payment or how</p> <p>6 to account for it?</p> <p>7 A. We talked about it after his session with</p> <p>8 you the other day.</p> <p>9 Q. Was that the first time you'd ever</p> <p>10 discussed the settlement payment with Mr. Stone?</p> <p>11 A. To the best of my knowledge, yes.</p> <p>12 Q. Tell me about the discussion the other day.</p> <p>13 A. He just said you were asking a lot of</p> <p>14 questions about it.</p> <p>15 Q. Did you discuss with anyone at or around</p> <p>16 the time of the settlement whether you needed the</p> <p>17 lender's consent to take the settlement payment out</p> <p>18 of Blue Hills?</p> <p>19 A. I knew there was a settlement. I don't</p> <p>20 know there's actually been a payment; and no, I did</p> <p>21 not talk to anybody about that.</p> <p>22 Q. Did you consider at the time whether or not</p> <p>23 the \$2 million payment that Mr. Goldberg told you</p> <p>24 was part of the settlement ought to be disclosed to</p>
<p>107</p> <p>1 your line of questioning.</p> <p>2 MR. FALBY: We can take a break now.</p> <p>3 Sorry. I didn't realize it.</p> <p>4 MR. MCGLYNN: That's okay with me.</p> <p>5 (Discussion off the record.)</p> <p>6 (Luncheon recess at 12:27 p.m.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>109</p> <p>1 the lender?</p> <p>2 A. No, I didn't consider it at the time.</p> <p>3 Q. Did you know at the time that you needed</p> <p>4 the lender's consent to convey the settlement monies</p> <p>5 out of Blue Hills?</p> <p>6 A. I had no understanding that I needed the</p> <p>7 lender's consent.</p> <p>8 Q. You've dealt with lenders before, right?</p> <p>9 A. Yes, I have.</p> <p>10 Q. You knew that if you told your lender about</p> <p>11 this payment, they'd insist on reserving it or</p> <p>12 applying it to the loan balance, right?</p> <p>13 MR. MCGLYNN: Objection as to form;</p> <p>14 speculative, calls for speculation.</p> <p>15 A. I'm not going to speculate what the lenders</p> <p>16 thought or didn't think.</p> <p>17 Q. Just because he says "speculation" doesn't</p> <p>18 mean that you then say what he's telling you to say.</p> <p>19 Please answer my question. Do you have it in mind?</p> <p>20 MR. MCGLYNN: First of all --</p> <p>21 A. Would you repeat the question.</p> <p>22 Q. Sure.</p> <p>23 MR. MCGLYNN: Let me just add, Bruce,</p> <p>24 I'm not telling him what to say; I'm voicing</p>

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31 (Pages 118 to 121)

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<p style="text-align: right;">118</p> <p>1 A. I'm not sure. If you have a copy of it, 2 I'd be glad to look at it. 3 Q. Let me show you Exhibit 10, which is the 4 lease termination agreement. 5 MR. MCGLYNN: This is not subject, to my 6 knowledge, to the confidentiality stipulation, so we 7 can go off that stipulation. 8 A. (Witness reviews document.) Yes, I have 9 seen this. 10 Q. Did you see it at the time it was entered 11 into? 12 A. I don't know. I don't remember if I saw it 13 then or not. 14 Q. When do you remember seeing it? 15 A. I can't give you a time period. 16 Q. Did you see it in preparation for your 17 deposition? 18 A. No, I don't think I did. 19 Q. Did you see it at or around the time it was 20 signed in the summer of 2003? 21 A. I don't know when I actually saw it. 22 Q. Is there some other time you might have 23 seen it? 24 MR. MCGLYNN: Objection, asked and</p>	<p style="text-align: right;">120</p> <p>1 A. No, I do not. 2 Q. Did you have any discussion with anybody 3 when you learned about the \$2 million payment, about 4 reserving it for future use by Blue Hills? 5 A. No, I don't remember any discussion. 6 Q. And you don't remember any discussion with 7 anybody about who got the money or where it went? 8 A. No. 9 Q. Were you curious about who got the money 10 and where it went? 11 MR. MCGLYNN: Objection. 12 A. No. 13 Q. You were the controller for Blue Hills 14 Office Park LLC, were you? 15 A. I was the CFO for Fineberg Management. 16 Q. And among your duties was overseeing the 17 books and records of Blue Hills Office Park LLC? 18 A. That's correct. 19 Q. You were, in essence, the CFO of Blue Hills 20 Office Park LLC? 21 A. If you want to say that. 22 Q. Well, did you think of yourself that way? 23 A. I think I was in charge of the day-to-day 24 accounting.</p>
<p style="text-align: right;">119</p> <p>1 answered. 2 A. I don't have a time period when I actually 3 saw it. 4 Q. What was the occasion that prompted you to 5 see the lease termination agreement, Exhibit 10? 6 A. I don't remember. 7 Q. Did you ever discuss it with anybody? 8 A. Not to my knowledge, no. 9 Q. You remember seeing it, but you have no 10 memory whatsoever of the circumstances? 11 A. No, not offhand, I do not. 12 Q. Nor do you have any memory of ever 13 communicating with anybody about it? 14 A. Offhand, I don't remember communicating 15 with anybody about this, no. 16 Q. When I ask you about communications, I'm 17 including anybody at Fineberg Management, Fine 18 Hotels, Blue Hills, EquiServe, National Development, 19 anybody. You don't recall ever communicating with 20 anybody about the lease termination agreement? 21 A. No, I do not, not off the top of my head. 22 Q. Do you know why Blue Hills didn't set aside 23 the \$2 million settlement payment as a further loan 24 reserve?</p>	<p style="text-align: right;">121</p> <p>1 Q. And you knew that Blue Hills had brought a 2 lawsuit, right? 3 A. Yes, I did. 4 Q. And you knew that Blue Hills was settling 5 that lawsuit? 6 A. I knew there was a settlement, yes. 7 Q. Who did you think was settling it if Blue 8 Hills wasn't settling the lawsuit that Blue Hills 9 brought? 10 A. I don't know. 11 Q. And as CFO it didn't occur to you to ask 12 who is getting the settlement payment? 13 A. No, it didn't. 14 Q. As CFO of Blue Hills Office Park LLC, you 15 didn't think you had any responsibility to account 16 for a settlement paid in connection with the 17 settlement of a lawsuit brought by Blue Hills Office 18 Park LLC? 19 MR. MCGLYNN: Objection. 20 A. No. 21 Q. Why not? I'll ask a complete question. 22 Why, as the CFO of Blue Hills Office Park LLC, did 23 you not think it was your responsibility to 24 determine what had happened to a \$2 million</p>

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1 settlement in connection with a lawsuit brought by
2 Blue Hills Office Park LLC?
3 MR. MCGLYNN: Objection.
4 A. The settlement was with the owners, and I'm
5 responsible for the operating books. I'm not
6 responsible for the owners' books.
7 MR. FALBY: Well, let's mark the
8 settlement agreement itself as Exhibit 21.
9 (Marked, Exhibit 21, Settlement
10 agreement.)
11 MR. MCGLYNN: This one, we should go
12 back and proceed under the confidentiality
13 stipulation.
14 Q. Do you recognize Exhibit 21 as the
15 settlement agreement that settled the zoning permit
16 appeal?
17 A. (Witness reviews document.) That's what it
18 looks like, yes.
19 Q. And the first paragraph says, "This
20 settlement agreement, the agreement, is entered into
21 as of this 5th day of August, 2003, among Blue Hills
22 Office Park LLC, DST Realty, Inc., and Blue View
23 Corporate Center LLC," correct?
24 A. Yes, that's what it says.

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1 Q. It doesn't say it's a settlement agreement
2 entered into among the owners of Blue Hills Office
3 Park and the other parties, does it?
4 A. No, that's not what it says.
5 Q. So again I ask you, why, as the CFO of Blue
6 Hills Office Park, were you not concerned about the
7 disposition of a \$2 million payment made pursuant to
8 a settlement agreement to which Blue Hills Office
9 Park was a party?
10 A. This is the first time I've seen the
11 settlement agreement.
12 Q. And prior to this moment you never realized
13 that the settlement of the lawsuit brought by Blue
14 Hills Office Park LLC was consummated in an
15 agreement to which Blue Hills Office Park LLC was a
16 party?
17 A. I knew there was a \$2 million settlement.
18 I didn't know which parties made the settlement.
19 Q. Nor did you inquire?
20 A. No.
21 Q. After the lease termination agreement was
22 signed insuring that EquiServe would leave the Blue
23 Hills Office Park no later than July 31, 2004, did
24 Blue Hills Office Park LLC make any efforts to find

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1 a replacement tenant?
2 A. Yes, they did.
3 Q. What efforts did Blue Hills make?
4 A. They hired a broker who started looking,
5 but I was not part of that process.
6 Q. Who was part of the process?
7 A. I believe it was Dan Frank and Larry
8 Needle.
9 Q. The broker was Cushman & Wakefield?
10 A. To the best of my knowledge, that's
11 correct.
12 Q. Do you know anything about the efforts that
13 Cushman & Wakefield made to find a replacement
14 tenant or tenants?
15 A. Just general information.
16 Q. What do you know?
17 A. I know they put together a brochure. I
18 know they brought a number of big clients through
19 looking at the building, including Dunkin' Donuts.
20 Q. What else do you know about the efforts of
21 Cushman & Wakefield to find replacement tenants for
22 EquiServe?
23 A. I didn't sit in on the meetings, so I don't
24 know what their effort was.

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1 Q. Paragraph 40 of the second amended
2 complaint, which is Exhibit 15, talks about Cushman
3 & Wakefield's efforts. Could you read that to
4 yourself, please, and tell me when you've finished.
5 A. (Witness reviews document.) Just 40?
6 Q. Yes.
7 A. I've finished.
8 Q. Paragraph 40 returns to -- strike that.
9 Paragraph 40 refers to Cushman & Wakefield's initial
10 leasing efforts; do you see that?
11 A. Yes.
12 Q. Do you have any idea how long Cushman &
13 Wakefield's initial leasing efforts lasted?
14 A. No, I don't.
15 Q. Do you know what those initial leasing
16 efforts entailed?
17 A. Other than what I stated, that I knew there
18 was some kind of prospective tenants brought through
19 the building, that's all I know.
20 Q. Do you know whether Cushman & Wakefield
21 identified any serious prospects for the space?
22 A. In my personal opinion, I thought Dunkin'
23 Donuts, from what I heard, was a very serious
24 prospect.

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1 A. No, I'm not.

2 Q. *All right. Well, I'm telling you that and
3 it's true. Taking what I'm telling you as true, how
4 do you reconcile the fact that the documents don't
5 allow use of the reserves to pay real estate taxes
6 with what you tell us is your understanding that you
7 were allowed to use the reserves to pay real estate
8 taxes?

9 MR. MCGLYNN: Objection as to form.
10 Would you please repeat that question.

11 *(Question read.)

12 MR. MCGLYNN: Further objection. That's
13 a hypothetical question and calls for a speculative
14 answer.

15 Q. What's the answer, Mr. Donovan?

16 A. When I wrote the letter, I thought we could
17 use it for real estate taxes.

18 Q. And now you realize you couldn't, right?

19 MR. MCGLYNN: Objection.

20 A. I don't. You say we can't, but that
21 doesn't mean it's a fact.

22 Q. We can go through the exercise of going
23 through all the documents, or you can just take it
24 from me -- let me leave the room and take it from

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1 Q. Was it your understanding when you wrote
2 your letter dated August 2, 2004, asking Wells Fargo
3 to apply the reserves to real estate taxes that you
4 were entitled under the loan documents to use the
5 reserves for that purpose?

6 MR. MCGLYNN: Objection, asked and
7 answered. I believe that this witness has answered
8 at least seven times now that that's what his
9 understanding was. Can we move on to something
10 else?

11 MR. FALBY: No, no, it isn't. I have
12 asked him a brand-new question. Please don't
13 interfere.

14 A. That was my understanding.

15 Q. Did you check the loan documents at that
16 point to confirm your understanding of them?

17 A. No, I did not.

18 Q. And have you since checked the loan
19 documents to confirm or debunk the notion that real
20 estate tax payments can be made from the reserve
21 accounts?

22 A. No, I have not.

23 Q. Sitting here today, do you know whether the
24 loan documents allow use of reserves to make real

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1 Mr. McGlynn, who has conceded this fact before --
2 the loan documents don't allow it.

3 MR. MCGLYNN: I didn't realize I was
4 conceding anything. I didn't realize I was under
5 oath here, but for the record --

6 MR. FALBY: Do you want to take issue
7 with that statement?

8 MR. MCGLYNN: I haven't conceded
9 anything. I'm not the witness. Formulate proper
10 questions, and the witness will answer them.

11 I don't think there's anything pending
12 before you now, Joe.

13 THE WITNESS: There's no question
14 pending?

15 Q. I'll ask you a question. That's my job.
16 Given that the loan documents don't allow the use of
17 reserves to pay real estate taxes, what's the basis
18 for your understanding that you are allowed to use
19 the reserves to pay real estate taxes?

20 A. It was my understanding when I wrote the
21 letter that we could use it to pay real estate
22 taxes. It was my understanding that it was to use
23 the money to keep the property running until we
24 found a new tenant.

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1 estate payments -- tax payments?

2 A. I don't know. I am just taking your word
3 for what you just said.

4 MR. MCGLYNN: Don't ever do that,
5 please, Joe.

6 Q. How much money did Blue Hills need to fix
7 up Blue Hills Office Park in order to attract a
8 tenant?

9 A. I do not know.

10 Q. Did Blue Hills -- strike that. Did Blue
11 Hills Office Park make any effort to find any new
12 partners to bring new money to the table?

13 A. That was a possibility once we sat down
14 with Lennar and had a chance to talk to them.

15 Q. Well, you never sat down with Lennar and
16 talked with them, did you?

17 A. No, we did not.

18 Q. So let me ask my question again. Did Blue
19 Hills make any effort to find any new partners to
20 bring new money into the project?

21 A. I did not personally, no.

22 Q. Do you know if anybody else did?

23 A. Not that I'm aware of.

24 Q. Did Blue Hills ever come up with a business

35 (Pages 137 to 140)

FARMER ARSENAULT BROCK

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40 (Pages 154 to 157)

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C O N F I D E N T I A L

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1 remember.

2 MR. MCGLYNN: Shall we get that marked
3 since the witness has --4 MR. FALBY: The witness just reviewed
5 his August 2, 2004 letter, which I'm going to mark
6 in a minute.7 **Q. There was only one letter on that date,**
8 **right?**

9 A. Excuse me?

10 **Q. There was only one letter from you to Wells**
11 **Fargo on August 2, 2004, right?**

12 A. I believe so, yes -- in 2002, you mean?

13 **Q. 2004.**14 A. (Witness reviews document.) I sent out
15 another letter at about that same time.16 **Q. Confirming that EquiServe had left the**
17 **building?**18 A. That's probably -- yeah, if you could show
19 it to me. (Witness reviews document.) Okay. That's
20 2005 so that's about the same time.21 **Q. It's still 2004. It's August.**22 A. (Witness reviews document.) I mean August
23 5, 2004.

24 MR. FALBY: Let me mark as Exhibit 22 a

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1 A. I know I spoke to somebody. I thought it
2 was in June, but that could be it, sure.3 **Q. Did you tell Mr. Mallegni that the property**
4 **was available for lease but there were no prospects**
5 **currently?**

6 A. I probably did, yes.

7 **Q. 'Cause both those facts were true at the**
8 **time, right?**

9 A. To the best of my knowledge, yes.

10 **Q. Does reviewing this e-mail prompt any**
11 **actual memory of the conversation?**12 A. I know I had a conversation. I thought --
13 when I said to you I thought it was June, this very
14 well could be the conversation I had.15 **Q. Other than what Exhibit 22 says, do you**
16 **have any memory of the content of the conversation**
17 **that you apparently had in July of 2004 with Curtis**
18 **Mallegni?**

19 A. No.

20 **Q. Up to July of '04, had you requested any**
21 **meetings with Wells Fargo?**22 A. Yes, I had. I had asked to sit and talk to
23 whoever at Wells Fargo that needed to talk about the
24 loans.

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1 document Bates-stamped LNR 2765 through 66.

2 MR. MCGLYNN: Thank you.

3 (Marked, Exhibit 22, E-mail from C.
4 Mallegni to V. Taylor, Bates-stamped LNR 2765
5 through 66.)

6 A. (Witness reviews document.)

7 **Q. Do you see that Exhibit 22 is an e-mail**
8 **from Mallegni at wells Fargo.com to Vickie Taylor?**

9 A. Yes.

10 **Q. And I'm referring to the first e-mail on**
11 **the page; do you see that?**

12 A. The one at the top?

13 **Q. Yes. It's dated July 15, 2004. It says; --**
14 **"Vickie, I spoke with CFO Joe Donovan on this loan.**
15 **Fleet has left the project. The property is**
16 **available for lease but there are no prospects**
17 **currently. We currently have \$4,118,062 in**
18 **reserves, and the loan is paid through 8/11/04.**
19 **We'll track this closely and advise"; do you see**
20 **that?**

21 A. Yes.

22 **Q. Does this refresh your memory about**
23 **speaking with Curtis Mallegni on or about July 15,**
24 **2004?**

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1 **Q. Who had you asked that of at Wells Fargo?**

2 A. I don't remember any names.

3 **Q. When did you ask that?**

4 A. It would have been in the time period 2004.

5 **Q. Well, I had asked you about the three or**
6 **four telephone conversations you had in early 2004,**
7 **which you said were done by April or May. And then**
8 **I went through each of the months up until July, and**
9 **you didn't tell me about any request for a meeting.**
10 **So was there some conversation you forgot about that**
11 **you now remember that you want to tell me about?**

12 A. No.

13 **Q. Well, in what conversation did you ask for**
14 **a meeting with Wells Fargo?**

15 A. I can't tell you which conversation.

16 **Q. Was it during one of the three or four**
17 **telephone conversations you described with somebody**
18 **at Wells Fargo where you told them that there was no**
19 **urgency because you expected to be able to replace**
20 **EquiServe when they moved out without any trouble?**21 A. At that point I probably didn't ask. The
22 only one I may have asked probably would have been
23 right here at this meeting, and I don't remember if
24 I did or not.

41 (Pages 158 to 161)

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C O N F I D E N T I A L

<p>158</p> <p>1 Q. So you don't actually remember whether you</p> <p>2 asked for a meeting, correct?</p> <p>3 A. I think I asked for a meeting, but I don't</p> <p>4 remember -- I don't specifically remember.</p> <p>5 Q. If you did ask for a meeting, you think it</p> <p>6 was during the July 15 conversation with Curtis</p> <p>7 Mallegni?</p> <p>8 A. It's possible.</p> <p>9 Q. But you don't know?</p> <p>10 A. No.</p> <p>11 Q. You don't really remember asking for a</p> <p>12 meeting. Do you remember what you were asking for a</p> <p>13 meeting about, if you were?</p> <p>14 MR. MCGLYNN: Objection.</p> <p>15 A. Could you rephrase that, please.</p> <p>16 Q. Well, you don't really remember whether you</p> <p>17 asked for a meeting or not, right?</p> <p>18 A. I don't remember specifics, no.</p> <p>19 Q. You think you might have, right?</p> <p>20 A. I think I might have.</p> <p>21 Q. And if you did, what were you asking for a</p> <p>22 meeting about?</p> <p>23 A. To talk about the continuation of the</p> <p>24 mortgage.</p>	<p>160</p> <p>1 Mallegni about having a meeting, do you have any</p> <p>2 idea of his response?</p> <p>3 MR. MCGLYNN: Objection.</p> <p>4 A. I don't know.</p> <p>5 Q. Do you know if anybody at Wells Fargo ever</p> <p>6 told anybody else at Blue Hills that they'd be</p> <p>7 willing to have a meeting?</p> <p>8 A. Not that I'm aware of.</p> <p>9 Q. Because there never was a meeting, right?</p> <p>10 MR. MCGLYNN: Objection.</p> <p>11 A. There was no meeting, no.</p> <p>12 Q. Did anybody from Blue Hills ask Wells Fargo</p> <p>13 for a meeting in August of '04?</p> <p>14 A. I don't know. Not that I'm aware of.</p> <p>15 Q. Did you talk to anybody at Blue Hills about</p> <p>16 whether they asked for a meeting?</p> <p>17 A. Not that I can remember, no.</p> <p>18 Q. Did you talk about whether you should ask</p> <p>19 for a meeting?</p> <p>20 A. Not that I can remember.</p> <p>21 Q. Did you talk to anybody at Blue Hills about</p> <p>22 whether Wells Fargo had refused to have a meeting?</p> <p>23 A. Not that I can remember.</p> <p>24 Q. Now, you learned at some point that Lennar</p>
<p>159</p> <p>1 Q. Why?</p> <p>2 MR. MCGLYNN: Objection.</p> <p>3 A. At that point in time, we were getting near</p> <p>4 the end of EquiServe moving out.</p> <p>5 Q. By "that point in time" you are referring</p> <p>6 to July 2004?</p> <p>7 A. Yeah, the June/July time period, sure.</p> <p>8 Q. Mr. Mallegni's e-mail recounting for Vickie</p> <p>9 Taylor his conversation with you doesn't note any</p> <p>10 request by you for a meeting; do you see that?</p> <p>11 A. I see that.</p> <p>12 Q. Did you have any communication with Wells</p> <p>13 Fargo in August asking for a meeting?</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. Do you know if anybody else at Blue Hills</p> <p>16 up through the end of July 2004 had asked Wells</p> <p>17 Fargo for a meeting?</p> <p>18 A. I don't know.</p> <p>19 Q. You don't recall any discussion with</p> <p>20 anybody else at Blue Hills on the topic of trying to</p> <p>21 get a meeting with Wells Fargo at that point, do</p> <p>22 you?</p> <p>23 A. Not offhand, no.</p> <p>24 Q. Tell me, if you can, if you did ask Curtis</p>	<p>161</p> <p>1 would be coming in as special servicer on the Blue</p> <p>2 Hills loan, correct?</p> <p>3 A. That's correct.</p> <p>4 Q. When did you learn that?</p> <p>5 A. I don't know.</p> <p>6 Q. All right. Let's mark your August 2 letter</p> <p>7 as Exhibit 23.</p> <p>8 (Marked, Exhibit 23, August 2, 2004</p> <p>9 letter from witness to Wells Fargo.)</p> <p>10 Q. Exhibit 23 is the August 2, 2004 letter</p> <p>11 that you wrote to Wells Fargo that we've looked at</p> <p>12 before today, correct?</p> <p>13 A. (Witness reviews document.) Yes.</p> <p>14 Q. It's addressed to Tim Parish at Wells</p> <p>15 Fargo, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Why did you send it to him?</p> <p>18 A. I must have had a conversation with him and</p> <p>19 knew him by name.</p> <p>20 Q. Was Tim Parish one of the people you were</p> <p>21 talking to during the three or four telephone</p> <p>22 conversations you've told me about that took place</p> <p>23 in late '03 and early '04?</p> <p>24 A. I don't know.</p>

43 (Pages 166 to 169)

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C O N F I D E N T I A L

<p>166</p> <p>1 Q. What date do you put on Exhibit 25?</p> <p>2 A. August 4.</p> <p>3 Q. Are you sure that's August 4 as opposed to</p> <p>4 August '04, that is, August 2004?</p> <p>5 A. It could be August of '04, yeah, 2004.</p> <p>6 Q. After Mr. Warshaw called and left the</p> <p>7 voice-mail of introduction that we've marked as</p> <p>8 Exhibit 25, did you subsequently actually talk to</p> <p>9 him on the phone?</p> <p>10 A. I can't remember.</p> <p>11 Q. As you search your memory, I take it you</p> <p>12 have no memory of actually talking live with Job</p> <p>13 Warshaw, correct?</p> <p>14 A. I can't remember talking to him. That</p> <p>15 doesn't mean I didn't.</p> <p>16 Q. I'm just saying, as you search your memory,</p> <p>17 there's nothing there about a conversation --</p> <p>18 MR. MCGLYNN: Objection.</p> <p>19 Q. -- with Job Warshaw, right?</p> <p>20 A. I can't remember talking to him.</p> <p>21 Q. And you have no notes or memos or letters</p> <p>22 or anything else in writing indicating that you ever</p> <p>23 talked to him, correct?</p> <p>24 A. No, I have no notes or memos.</p>	<p>168</p> <p>1 had. Number two, I copied in Job Warshaw on the</p> <p>2 correspondence. I had no notification that it had</p> <p>3 been transferred to a special servicer as far as I</p> <p>4 knew at that point.</p> <p>5 Q. Well, actually, there was an August 19</p> <p>6 letter telling you that the loan had been</p> <p>7 transferred to the special servicer. Do you</p> <p>8 remember that?</p> <p>9 A. Not offhand.</p> <p>10 Q. Before we go to that August 19 letter,</p> <p>11 looking at -- strike that. Looking at Exhibit 24,</p> <p>12 the August 5, 2004 letter, do you see that it says</p> <p>13 "sent via facsimile"?</p> <p>14 A. Uh-huh.</p> <p>15 Q. You have to say yes or no.</p> <p>16 A. Yes.</p> <p>17 Q. The August 2 letter doesn't say "sent via</p> <p>18 facsimile," does it?</p> <p>19 A. No.</p> <p>20 Q. Do you know how Exhibit 23, the August 2</p> <p>21 letter, was sent?</p> <p>22 A. Not sitting here I don't, no.</p> <p>23 Q. If you were going to send a letter by fax,</p> <p>24 was it your practice to note on the letter that it</p>
<p>167</p> <p>1 Q. Do you have a memory of talking to</p> <p>2 Mr. Polcari?</p> <p>3 A. Yes, I do.</p> <p>4 Q. When?</p> <p>5 A. I don't have a good time -- time frame.</p> <p>6 Q. Was it in August 2004; do you know?</p> <p>7 A. I don't know.</p> <p>8 Q. You sent another letter to Tim Parish dated</p> <p>9 September 2, 2004, which we will mark as Exhibit 26.</p> <p>10 (Marked, Exhibit 26, Letter to Tim</p> <p>11 Parish from witness dated September 2, 2004.)</p> <p>12 Q. Can you confirm that Exhibit 26 is a letter</p> <p>13 you wrote to Mr. Tim Parish at Wells Fargo on</p> <p>14 September 2, 2004, asking that reserve monies be</p> <p>15 used to pay principal and interest due for</p> <p>16 September?</p> <p>17 A. (Witness reviews document.) Yes.</p> <p>18 Q. Did you talk to Mr. Polcari before you sent</p> <p>19 the September 2 letter to Mr. Parish?</p> <p>20 A. I don't know.</p> <p>21 Q. As of September 2 you knew that Lennar was</p> <p>22 servicing the loan. Why did you send the September</p> <p>23 2 letter to Tim Parish at Wells Fargo?</p> <p>24 A. Because, number one, that's the address I</p>	<p>169</p> <p>1 was going by fax?</p> <p>2 A. It would usually be on there, but it</p> <p>3 depended on who typed it for me. Sometimes whoever</p> <p>4 was available, they might not have put that on</p> <p>5 there.</p> <p>6 Q. So you can't say for sure whether or not</p> <p>7 the August 2 letter went by fax or mail?</p> <p>8 A. No, I cannot.</p> <p>9 Q. Do you have any memory of which way it</p> <p>10 went?</p> <p>11 A. No, not offhand.</p> <p>12 Q. So do you have any idea whether the</p> <p>13 September 2 letter went by fax or by mail?</p> <p>14 A. I don't know offhand.</p> <p>15 Q. Because the September 2 letter, Exhibit 26,</p> <p>16 doesn't say on it that it was sent by fax either,</p> <p>17 does it?</p> <p>18 A. No, it does not.</p> <p>19 Q. Now, in response to your -- let's do this</p> <p>20 another way.</p> <p>21 MR. FALBY: Let's mark as -- Exhibit 27,</p> <p>22 are we up to?</p> <p>23 MR. MCGLYNN: Yes.</p> <p>24 MR. FALBY: -- documents Bates-stamped</p>

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C O N F I D E N T I A L

<p style="text-align: right;">186</p> <p>1 Mr. Polcari before Lennar sent its September 17 2 default notice? 3 A. I don't know when my conversations with 4 Mr. Polcari took place. 5 Q. Well, let me first show you the September 6 17 default notice. 7 MR. FALBY: We will mark it Exhibit 30. 8 (Marked, Exhibit 30, September 17 9 default notice.) 10 THE WITNESS: Can we take a break to go 11 to the bathroom? 12 MR. FALBY: Okay. 13 MR. MCGLYNN: Off the record. 14 (Discussion off the record.) 15 (Recess.) 16 BY MR. FALBY: 17 Q. I have handed you Exhibit 30. Do you 18 recognize that as the letter that came to you dated 19 September 17, 2004, from Lennar defaulting Blue 20 Hills under the mortgage loan? 21 A. (Witness reviews document.) Yes. 22 Q. The first paragraph references your letters 23 of August 2, 2004, and September 2, 2004, to Tim 24 Parish, correct?</p>	<p style="text-align: right;">188</p> <p>1 A. I don't remember saying that. 2 Q. Do you remember telling Mr. Polcari during 3 that conversation that Blue Hills had no tenant 4 prospects at that time? 5 A. I don't remember the conversation. 6 Q. And do you recall telling Mr. -- let me 7 rephrase it. Does it refresh your memory and cause 8 you to remember the conversation if I tell you that 9 you acknowledged to Mr. Polcari in that conversation 10 that it didn't really matter that access to the 11 reserves would be denied because you weren't going 12 to get a tenant in there within the four months 13 during which you were entitled to get access to the 14 reserves? 15 A. No, I never remember saying that. 16 Q. Does it refresh your memory if I tell you 17 that you said, in words or substance, the reserves 18 would not carry you forever? 19 A. No, again, I don't remember the 20 conversation. 21 Q. Can you unequivocally deny that the 22 conversation took place? 23 A. I don't remember the conversation. 24 Q. My question is a little different. It's</p>
<p style="text-align: right;">187</p> <p>1 A. Yes. 2 Q. And it says, "Following are our responses 3 to your letters," correct? 4 MR. MCGLYNN: Do you want him to read 5 what it says? 6 MR. FALBY: I'm asking him to agree with 7 me that the last -- 8 A. I'm sorry, I didn't hear you. 9 Q. The last sentence of the first paragraph 10 says, "The following are our responses to your 11 letters," correct? 12 A. That's what it says, yes. 13 Q. Prior to receiving this notice, had you 14 received any written response to your letters of 15 August 2 or September 2? 16 A. No, I didn't. 17 Q. Do you recall before you received Exhibit 18 30 that Mr. Polcari called you on the telephone as a 19 courtesy to let you know that this letter would be 20 coming? 21 A. Not offhand, I don't remember that, no. 22 Q. Does it refresh your memory to tell you 23 that you responded that you understood Lennar's 24 position?</p>	<p style="text-align: right;">189</p> <p>1 clear you don't remember it. I'm asking you 2 something different. Can you categorically state 3 that it did not take place? 4 MR. MCGLYNN: Objection. 5 A. As far as I know, the conversation did not 6 take place. 7 Q. That's because you don't remember it, 8 correct? 9 A. That's correct. 10 Q. My question is different. It's whether you 11 can categorically deny it not because you have a 12 lack of memory, but because you are absolutely 13 certain that it never took place. 14 MR. MCGLYNN: Objection. 15 A. I don't categorically deny anything about 16 anything. 17 Q. Well, you can probably -- 18 MR. MCGLYNN: One at a time. The 19 question's been asked and answered, Bruce. 20 MR. FALBY: No, he's avoiding answering 21 my question. 22 MR. MCGLYNN: Let's not characterize the 23 testimony. 24 MR. FALBY: Let's not interfere with my</p>

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51 (Pages 198 to 201)

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<p style="text-align: right;">198</p> <p>1 MR. FALBY: Reaching across the table?</p> <p>2 You are hallucinating, Mr. McGlynn, be serious.</p> <p>3 MR. MCGLYNN: I am looking at you</p> <p>4 leaning towards this witness in an intimidating</p> <p>5 fashion.</p> <p>6 MR. FALBY: I'm looking at you getting</p> <p>7 ready to attack me right now. It's very</p> <p>8 threatening.</p> <p>9 MR. MCGLYNN: My guess is that since</p> <p>10 you've got about six or seven inches of height on me</p> <p>11 and maybe a few more pounds in weight, that you are</p> <p>12 not going to be intimidated by me staring at you.</p> <p>13 MR. FALBY: I bet you weigh more than I</p> <p>14 do.</p> <p>15 MR. MCGLYNN: Can you unequivocally</p> <p>16 state that I weigh more than you do?</p> <p>17 MR. FALBY: No.</p> <p>18 MR. MCGLYNN: Let's move on. You have</p> <p>19 asked this ad nauseam.</p> <p>20 MR. FALBY: Well, I am going to ask it</p> <p>21 again.</p> <p>22 MR. MCGLYNN: Okay, and I will keep</p> <p>23 interposing an objection.</p> <p>24 MR. FALBY: That's fine. Why don't you</p>	<p style="text-align: right;">200</p> <p>1 A. Because I wanted to work out some kind of</p> <p>2 deal.</p> <p>3 Q. Were you upset for any other reason?</p> <p>4 A. Yeah, this is a great asset, we didn't want</p> <p>5 to lose it.</p> <p>6 Q. Were you upset for any other reason?</p> <p>7 A. Not that I can think of offhand.</p> <p>8 Q. You told me that Exhibit 30 was the first</p> <p>9 written response you had received to your August 2</p> <p>10 and September 2 request for access to the reserve</p> <p>11 funds, correct?</p> <p>12 A. To the best of my knowledge, that's true.</p> <p>13 Q. Had you received any nonwritten response to</p> <p>14 your request before that date, whether in a</p> <p>15 conversation in person or over the telephone or any</p> <p>16 other way?</p> <p>17 A. Not that I can remember, no.</p> <p>18 Q. Prior to September 17, 2004, no one at</p> <p>19 Wells Fargo or Lennar had ever told you that your</p> <p>20 request for access to the reserve accounts had been</p> <p>21 granted, correct?</p> <p>22 A. That had been -- I'm sorry, I didn't hear</p> <p>23 you.</p> <p>24 Q. Prior to September 17, 2004, no one at</p>
<p style="text-align: right;">199</p> <p>1 have a standing objection to my question until I get</p> <p>2 the answer I am entitled to get.</p> <p>3 Q. I have asked you about a conversation that</p> <p>4 Mr. Polcari says he had with you in which he called</p> <p>5 you as a courtesy to tell you that the default</p> <p>6 notice dated September 17 was coming, and you said</p> <p>7 you don't remember any such conversation, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And my question to you very simply is, did</p> <p>10 that conversation occur?</p> <p>11 MR. MCGLYNN: Objection.</p> <p>12 Q. "Yes," "no," or "I don't know"?</p> <p>13 A. I can't answer it because I don't know.</p> <p>14 Q. All right. After you received this</p> <p>15 September 17 default notice, did you do anything?</p> <p>16 A. I shared it with my lawyer.</p> <p>17 Q. Who?</p> <p>18 A. Ken Goldberg.</p> <p>19 Q. Did you do anything else?</p> <p>20 A. Not that I can remember.</p> <p>21 Q. What was your reaction when you got the</p> <p>22 September 17 default notice?</p> <p>23 A. I was upset.</p> <p>24 Q. Why?</p>	<p style="text-align: right;">201</p> <p>1 Wells Fargo or Lennar had ever told you that your</p> <p>2 request for access to the reserve accounts had been</p> <p>3 granted, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Do you recall that Blue Hills received a</p> <p>6 tax shortage notice from Wells Fargo in mid-July</p> <p>7 2004?</p> <p>8 A. Yes, I believe that was a standard notice</p> <p>9 that we got every quarter.</p> <p>10 Q. And do you recall discussing that notice</p> <p>11 when it came in mid-month with Gil Stone?</p> <p>12 A. -- I probably did, yes.</p> <p>13 Q. What's your memory of that conversation?</p> <p>14 A. Probably that it was a standard thing that</p> <p>15 Wells Fargo -- the computer at Wells Fargo kicked</p> <p>16 out every quarter, and under normal circumstances,</p> <p>17 as soon as EquiServe gave us the money, we would</p> <p>18 send it right to Wells Fargo and have the taxes</p> <p>19 paid.</p> <p>20 Q. You discussed all that with Gil Stone when</p> <p>21 it came in?</p> <p>22 A. That would be the normal discussion on a</p> <p>23 quarterly basis.</p> <p>24 Q. Did you have any other discussion with</p>

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<p style="text-align: right;">206</p> <p>1 Q. Could you please answer my question.</p> <p>2 MR. MCGLYNN: Objection.</p> <p>3 Q. Nor did you expect, did you, that Wells</p> <p>4 Fargo would be escrowing monies from rents to pay</p> <p>5 real estate taxes due on August 1, correct?</p> <p>6 MR. MCGLYNN: Objection.</p> <p>7 A. No, because I didn't think there was any</p> <p>8 need to.</p> <p>9 Q. Well, I move to strike everything after no,</p> <p>10 and I need to ask it again. Every time you add</p> <p>11 something to the answer, I have to ask it again, so</p> <p>12 it just keeps us here longer.</p> <p>13 MR. MCGLYNN: By the way, the mere fact</p> <p>14 that you are moving to strike doesn't mean it's</p> <p>15 stricken. You have put that on the record. We can</p> <p>16 move on.</p> <p>17 MR. FALBY: No, we can't move on because</p> <p>18 if it's denied, I am entitled to a clean answer.</p> <p>19 Q. You didn't expect Wells Fargo in May, June,</p> <p>20 or July to be taking from rents monies and putting</p> <p>21 them in a tax escrow account to pay taxes due on</p> <p>22 August 1, 2004, correct?</p> <p>23 MR. MCGLYNN: Objection.</p> <p>24 A. No.</p>	<p style="text-align: right;">208</p> <p>1 A. That's what it looks like.</p> <p>2 Q. To Blue Hills?</p> <p>3 A. That's what it looks like.</p> <p>4 Q. And this represented net rents from the</p> <p>5 Blue Hills Office Park, correct?</p> <p>6 A. I assume so. I mean, I've not seen this</p> <p>7 one page. I don't know if that's what it is or not,</p> <p>8 but I mean, it seems reasonable.</p> <p>9 MR. FALBY: Let's mark a similar</p> <p>10 document for June 2004 Bates-stamped WF 2004 through</p> <p>11 2008.</p> <p>12 (Marked, Exhibit 32, Documents relating</p> <p>13 to distribution in June 2004, Bates-stamped WF 2004</p> <p>14 through 2008.)</p> <p>15 Q. You probably haven't seen Exhibit 32 before</p> <p>16 either, correct?</p> <p>17 A. (Witness reviews document.) No, I haven't.</p> <p>18 Q. It suggests that in June Wells Fargo sent</p> <p>19 Blue Hills \$173,063.76 in net rents, correct?</p> <p>20 A. That's what it suggests, yes.</p> <p>21 Q. Do you have any reason to doubt that that's</p> <p>22 what happened?</p> <p>23 A. No.</p> <p>24 Q. I don't have one of these for July, but the</p>
<p style="text-align: right;">207</p> <p>1 Q. Each month Wells Fargo distributed net</p> <p>2 rents to Blue Hills after paying debt service and</p> <p>3 putting money in various escrow subaccounts,</p> <p>4 correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And that was approximately \$175,000 a</p> <p>7 month, correct?</p> <p>8 A. Off the top of my head, I don't know how</p> <p>9 much it was.</p> <p>10 MR. FALBY: Let's mark as Exhibit 31</p> <p>11 documents relating to the distribution in May of</p> <p>12 2004.</p> <p>13 (Marked, Exhibit 31, Documents relating</p> <p>14 to the distribution in May of 2004.)</p> <p>15 Q. Do you recognize Exhibit 31, Mr. Donovan?</p> <p>16 A. (Witness reviews document.) No, I've never</p> <p>17 seen any of these before.</p> <p>18 Q. Do you recognize any of the pages of</p> <p>19 Exhibit 31; that is, have you seen these pages</p> <p>20 before or pages like them?</p> <p>21 A. Have I seen wire instructions before? Yes.</p> <p>22 Have I seen this one? No, I haven't seen it.</p> <p>23 Q. Does this refresh your memory that Wells</p> <p>24 Fargo in May of 2004 wired \$174,000?</p>	<p style="text-align: right;">209</p> <p>1 number for July was similar. Is it consistent with</p> <p>2 your memory that in July 2004 Wells Fargo remitted</p> <p>3 approximately 170-something thousand in net rents to</p> <p>4 Blue Hills?</p> <p>5 A. I didn't see this on a monthly basis, so I</p> <p>6 don't know how much they sent each month to Blue</p> <p>7 Hills.</p> <p>8 Q. Do you have any reason to doubt that that</p> <p>9 much was sent in July '04?</p> <p>10 A. It very well could have been.</p> <p>11 Q. Into what accounts did the net rents come</p> <p>12 when they were refunded to Blue Hills?</p> <p>13 A. It's going into a Banknorth account.</p> <p>14 Q. Which account?</p> <p>15 A. Do you want the account number?</p> <p>16 Q. No. Was it an operating account?</p> <p>17 A. It must have been the operating account,</p> <p>18 yes.</p> <p>19 Q. For Blue Hills?</p> <p>20 A. Yes.</p> <p>21 Q. Did Blue Hills have a separate operating</p> <p>22 account?</p> <p>23 A. Yes.</p> <p>24 Q. Separate, that is, from a lockbox account?</p>

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<p>210</p> <p>1 A. Yes.</p> <p>2 Q. Did you use the operating account to pay</p> <p>3 bills?</p> <p>4 A. Yes.</p> <p>5 Q. And distribute monies to partners?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know how much of the monthly net</p> <p>8 rents was used to pay expenses in 2004?</p> <p>9 A. No, I don't, offhand.</p> <p>10 Q. Do you have any idea?</p> <p>11 A. I don't have a clue.</p> <p>12 Q. In each month was any remainder --</p> <p>13 A. I don't know.</p> <p>14 Q. Strike that. I've got to finish the</p> <p>15 question. In each month was the difference between</p> <p>16 net rents and expenses distributed to the partners?</p> <p>17 A. Excuse me. Say that again.</p> <p>18 Q. Was the difference between the net rents</p> <p>19 and the monthly expenses each month distributed to</p> <p>20 the partners on a monthly basis?</p> <p>21 A. No.</p> <p>22 Q. Did the net rents each month exceed the</p> <p>23 amount of property expenses that were used to --</p> <p>24 strike that. Did the net rents sent back -- did the</p>	<p>212</p> <p>1 A. Because it was our money sitting in the</p> <p>2 escrow account, and it was my opinion it could be</p> <p>3 used for paying real estate taxes.</p> <p>4 Q. And you don't know whether your opinion is</p> <p>5 consistent with what the loan documents actually</p> <p>6 say?</p> <p>7 A. No.</p> <p>8 Q. What monthly expenses did Blue Hills have</p> <p>9 that it had to pay out of net rents?</p> <p>10 A. Off the top of my head, I don't know.</p> <p>11 Q. EquiServe had a triple net lease, right?</p> <p>12 A. Pretty much, I think.</p> <p>13 Q. Were there any expenses that Blue Hills</p> <p>14 paid?</p> <p>15 A. There was a lot of expenses that Blue Hills</p> <p>16 paid.</p> <p>17 Q. What were they?</p> <p>18 A. Off the top of my head, I don't know. Gil</p> <p>19 Stone handled that on a day-to-day basis.</p> <p>20 Q. Do you have any idea of the approximate</p> <p>21 amount of those expenses a month?</p> <p>22 A. No, I don't.</p> <p>23 Q. Do you have any idea of the approximate</p> <p>24 amount of the distribution to the Blue Hills</p>
<p>211</p> <p>1 net rents sent back by Wells Fargo every month</p> <p>2 exceed the monthly expenses for the property?</p> <p>3 A. I think in most months it did, not in all</p> <p>4 months.</p> <p>5 Q. And what happened to the positive</p> <p>6 difference?</p> <p>7 A. I believe on an annual basis or maybe every</p> <p>8 six months there may have been a distribution to the</p> <p>9 partners.</p> <p>10 Q. Was there a distribution by Blue Hills to</p> <p>11 its partners at the end of 2003?</p> <p>12 A. I don't remember offhand.</p> <p>13 Q. As of -- strike that. As of July 2004, how</p> <p>14 much money was in the operating account?</p> <p>15 A. I don't know at this point.</p> <p>16 Q. Was there a distribution of monies to the</p> <p>17 Blue Hills partners from the operating account at</p> <p>18 the end of July 2004?</p> <p>19 A. I don't know.</p> <p>20 Q. How come Blue Hills did not use the</p> <p>21 leftover monies in the operating account to pay the</p> <p>22 taxes due August 1, 2004?</p> <p>23 A. Because in my opinion it didn't need to.</p> <p>24 Q. Why not?</p>	<p>213</p> <p>1 partners at the end of 2003?</p> <p>2 A. No, I don't.</p> <p>3 Q. How were insurance premiums handled by Blue</p> <p>4 Hills in 2004?</p> <p>5 A. The insurance year for our company runs May</p> <p>6 1 on, so we had a new insurance year, and we drew</p> <p>7 the funds down to pay the insurance.</p> <p>8 Q. When you say you drew the funds down, does</p> <p>9 that mean Blue Hills took monies in the insurance</p> <p>10 premium escrow subaccount to pay the insurance</p> <p>11 premium?</p> <p>12 A. Yes.</p> <p>13 Q. The paperwork indicates that Blue Hills</p> <p>14 paid those premiums and then sought reimbursement</p> <p>15 from the subaccount. Is that how it worked?</p> <p>16 A. Fine Hotels paid the premiums, and then I</p> <p>17 think the subaccount -- then the money from Wells</p> <p>18 Fargo reimbursed Fine Hotels.</p> <p>19 Q. Is that the way it was typically handled?</p> <p>20 A. Yes, we -- to get the discount on the</p> <p>21 insurance, we'd do all the entities together so all</p> <p>22 the liability insurance, all the umbrella insurance,</p> <p>23 all the workers' comp insurance, all the property</p> <p>24 insurance would be done as a group and then</p>

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1 deposition Stone Exhibit 6, which is an account of
2 another conversation with Gil Stern and Wells Fargo
3 about paying the real estate taxes?

4 A. I saw a thing that said "Gil Stern." I
5 didn't realize there was two of them.

6 Q. Do you want to take a moment and just read
7 both of them? I'm going to ask you about them.

8 A. (Witness reviews documents.) Okay.

9 Q. Do you see that the account of a
10 conversation contained in Stone Exhibit 5 says, "I
11 have contacted Gil Stern, phone number
12 1-781-239-1480"? Do you see that?

13 A. Yes, I do see that.

14 Q. That's the phone number of Fineberg
15 Management, correct?

16 A. That's the Fineberg Management phone
17 number, yes.

18 Q. Do Stone Exhibits 5 and 6 refresh your
19 memory that when the tax shortage notice came in, or
20 shortly thereafter, in fact Mr. Stone did have
21 conversations with Wells Fargo folks about payment
22 of the real estate taxes?

23 A. I don't believe Mr. Stone had any
24 conversations about the real estate taxes at that

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1 particular time.

2 Q. Can you explain why you say that?

3 A. Well, if they were telling Mr. Stone that
4 he needed the lien waiver, he would have come right
5 up to me and talked to me about it; and I don't
6 think -- I don't remember him ever coming up to me
7 and asking me for lien waivers.

8 Q. Well, does it make sense that Wells Fargo
9 wouldn't have called Blue Hills looking for the tax
10 money when it didn't come?

11 A. I don't know if they called on a quarterly
12 basis or not or if they just sent out the letter.

13 Q. Well, don't you think once they sent the
14 letter, when they didn't get the money they would
15 have called and said, "Hey, where's the money you
16 were supposed to send"?

17 MR. MCGLYNN: Objection.

18 A. They may have, but if Gil Stone had a phone
19 call like that, he would have been running right
20 down to my office, and certification just -- I don't
21 know what they mean by a certification. That
22 doesn't seem to make any sense to me. It's a
23 nonsensical request, as far as I'm concerned.

24 Q. You don't recall having any conversation

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1 with Mr. Stone about this subject?

2 A. No.

3 Q. Now, Mr. Stone, as you probably know from
4 having looked at his transcript, doesn't remember
5 these conversations, nor, however, can he deny them.
6 Are you sure that this topic wasn't discussed with
7 Wells Fargo towards the end of July 2004?

8 A. I don't believe it was.

9 Q. Can you think of any reason why people at
10 Wells Fargo would be making notes about
11 conversations with Gil Stern at your telephone
12 number if they hadn't taken place?

13 MR. MCGLYNN: Objection.

14 A. I think you'd have to ask them.

15 Q. Because you can't think of any reason why
16 they would be at that point fabricating
17 conversations?

18 MR. MCGLYNN: Objection.

19 A. I don't know if they are or not. You have
20 to ask them.

21 Q. Can you think of any reason why they would?

22 MR. MCGLYNN: Objection.

23 A. I don't know. I don't work for Wells

24 Fargo. I don't know what the atmosphere is like

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1 there.

2 Q. As between the two possibilities, that Gil
3 Stone's memory is faulty and people at Wells Fargo
4 were fabricating notes of conversations that didn't
5 happen, which do you think is more likely?

6 MR. MCGLYNN: Objection, calls for
7 speculation.

8 MR. FALBY: No, it doesn't.

9 A. Gil Stone is a very trustworthy,
10 hard-working guy that would be running right down to
11 my office with a -- any kind of phone conversation
12 like that, so I don't believe he ever had that phone
13 conversation.

14 Q. In fact, Wells Fargo advanced the money to
15 pay those taxes that were due; you know that now,
16 correct?

17 A. I knew that then.

18 Q. When did you find that out?

19 A. We contacted the town and saw that it was
20 paid.

21 Q. When did you do that?

22 A. Somewhere in August of '04.

23 Q. Stone Exhibit 6 says, "Advancing funds
24 today per ops," o-p-s, "manager approval"; do you

55 (Pages 217 to 220)

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<p style="text-align: right;">226</p> <p>1 A. I assume it was.</p> <p>2 Q. Why do you assume it was?</p> <p>3 A. Because that would be the normal procedure.</p> <p>4 Q. You had the normal practice of following up</p> <p>5 faxes by sending the original letter by mail?</p> <p>6 A. Yeah, yeah. I mean, if we -- this did not</p> <p>7 say fax on it, so normal procedure would be we would</p> <p>8 have mailed the original letter.</p> <p>9 Q. So the normal procedure when it doesn't say</p> <p>10 "fax" is that you mailed it, right?</p> <p>11 A. That's correct.</p> <p>12 Q. And that Exhibit G to the second amended</p> <p>13 complaint indicates that you also, two days later,</p> <p>14 on August 4, faxed it, correct?</p> <p>15 A. Right.</p> <p>16 Q. Do you recall whether you faxed it in</p> <p>17 response to some request from somebody or something?</p> <p>18 A. I don't recall.</p> <p>19 Q. 'Cause faxing it two days after its date</p> <p>20 wasn't in your normal course, right?</p> <p>21 A. Right.</p> <p>22 Q. And the letter that you mailed on August 2</p> <p>23 was going to California?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">228</p> <p>1 had applied any money from the reserves to pay</p> <p>2 principal and interest or real estate taxes?</p> <p>3 A. I don't know.</p> <p>4 Q. As far as you know, did Lennar or Wells</p> <p>5 Fargo ever take any money out of the reserve</p> <p>6 accounts to pay anything?</p> <p>7 A. I'm sorry?</p> <p>8 Q. As far as you know, did Wells Fargo or</p> <p>9 Lennar ever take any money out of the reserve</p> <p>10 accounts to pay principal and interest or taxes?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. At least through August 17, right?</p> <p>13 A. Right.</p> <p>14 Q. And eventually -- strike that. Eventually,</p> <p>15 when there was a foreclosure, the reserves were</p> <p>16 applied to the loan, right?</p> <p>17 A. I would assume so.</p> <p>18 Q. At any point between August 2, when you</p> <p>19 sent off your first request for payment from the</p> <p>20 reserves, until the September 17 default notice, did</p> <p>21 you have any reason to believe that Wells Fargo or</p> <p>22 Lennar had done what you requested and taken monies</p> <p>23 out of the reserve accounts to apply them to</p> <p>24 principal and interest and real estate taxes?</p>
<p style="text-align: right;">227</p> <p>1 Q. Likely not even received by August 4,</p> <p>2 correct?</p> <p>3 A. With the U.S. Postal Service, probably.</p> <p>4 Q. Probably not?</p> <p>5 A. Probably not received.</p> <p>6 Q. Did you fax it on August 4 because somebody</p> <p>7 called about something, and you said, "Oh, we sent a</p> <p>8 letter, let me fax it to you"?</p> <p>9 A. I don't remember.</p> <p>10 Q. Did you get regular accounting statements</p> <p>11 from Wells Fargo showing what amounts had been paid</p> <p>12 towards the loan like a monthly accounting</p> <p>13 statement?</p> <p>14 A. Yes.</p> <p>15 Q. At what point in the month?</p> <p>16 A. I don't know.</p> <p>17 Q. Did they come to you?</p> <p>18 A. No.</p> <p>19 Q. Did you ever look at them?</p> <p>20 A. I've seen them in the files, but I</p> <p>21 wouldn't -- I would not look at them on a normal</p> <p>22 basis.</p> <p>23 Q. Did any accounting statement come in August</p> <p>24 or September indicating that Wells Fargo or Lennar</p>	<p style="text-align: right;">229</p> <p>1 A. We contacted the town of Canton and found</p> <p>2 out that the real estate taxes were paid, so we</p> <p>3 assumed that Wells Fargo was responding to the</p> <p>4 letter.</p> <p>5 Q. Did you have any reason to believe that</p> <p>6 Wells Fargo or Lennar had responded to the letter by</p> <p>7 taking money from the reserves to pay principal and</p> <p>8 interest?</p> <p>9 A. We believed at that point that yes, that's</p> <p>10 what they had done.</p> <p>11 Q. And why did you think that?</p> <p>12 A. Because the real estate taxes were paid.</p> <p>13 Q. Is there any other basis for your belief</p> <p>14 that Wells Fargo had acted favorably upon your</p> <p>15 August 2 request and actually applied money from the</p> <p>16 reserves to both real estate taxes and principal and</p> <p>17 interest other than the fact that you determined</p> <p>18 that the real estate taxes had been paid?</p> <p>19 MR. MCGLYNN: Objection. You can</p> <p>20 answer.</p> <p>21 A. No.</p> <p>22 Q. You never requested, did you, that Wells</p> <p>23 Fargo or Lennar apply money in the reserve accounts</p> <p>24 to pay the other monthly loan amounts that were due</p>

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<p style="text-align: right;">230</p> <p>1 on either August 11 or September 11, correct?</p> <p>2 A. What do you mean by "what other amounts"?</p> <p>3 I mean, I requested real estate taxes, principal and</p> <p>4 interest. That's all I requested from them.</p> <p>5 Q. You knew, didn't you, that on August --</p> <p>6 strike that. You knew, didn't you, that on the 11th</p> <p>7 of the month Blue Hills was also required to make</p> <p>8 payments to various escrow subaccounts, correct?</p> <p>9 A. Under normal circumstances, yes.</p> <p>10 Q. Did you request at any point that those</p> <p>11 payments be made from the reserve accounts or</p> <p>12 otherwise waived?</p> <p>13 A. No, I did not.</p> <p>14 Q. Was that an oversight or did you think</p> <p>15 something else? Strike that. Did you forget about</p> <p>16 those amounts that were due?</p> <p>17 MR. MCGLYNN: Objection.</p> <p>18 A. At that point I was looking to draw down</p> <p>19 the reserve. I didn't think there was any need to</p> <p>20 put more money into the reserve.</p> <p>21 Q. And why did you conclude that?</p> <p>22 A. 'Cause I was drawing money out.</p> <p>23 Q. Did you confirm that understanding with</p> <p>24 anybody at Wells Fargo or Lennar?</p>	<p style="text-align: right;">232</p> <p>1 to keep us up and running until we found a new</p> <p>2 tenant and to build out the property, and I don't</p> <p>3 think Lennar gave us a chance at all. I think they</p> <p>4 just went directly ahead with the foreclosure.</p> <p>5 Q. Do you know whether there was any limit on</p> <p>6 the amount of money in the reserve accounts that</p> <p>7 could be used to pay debt service?</p> <p>8 A. At the time I wasn't aware of it, but I</p> <p>9 think now, yes, there is, there was some kind of</p> <p>10 limit.</p> <p>11 Q. And do you think that that limit is valid,</p> <p>12 or is it superseded by your understanding that the</p> <p>13 amounts could be used to pay debt service generally?</p> <p>14 MR. MCGLYNN: Objection as to form.</p> <p>15 A. I think it was a valid statement.</p> <p>16 Q. And do you now understand that the most</p> <p>17 that could be taken from the reserve accounts to pay</p> <p>18 principal and interest, assuming the conditions to</p> <p>19 it -- to release of the monies were met, was a</p> <p>20 million dollars?</p> <p>21 A. That's my understanding, yes.</p> <p>22 Q. Which was less than four months of debt</p> <p>23 service, correct?</p> <p>24 A. That's about right.</p>
<p style="text-align: right;">231</p> <p>1 A. No, I did not.</p> <p>2 Q. Did you attempt to confirm that</p> <p>3 understanding by looking at the loan documents?</p> <p>4 A. No, I did not.</p> <p>5 Q. Did you attempt to confer -- strike that.</p> <p>6 Did you attempt to confirm that understanding with</p> <p>7 your attorney?</p> <p>8 MR. MCGLYNN: Yes or no.</p> <p>9 A. No.</p> <p>10 Q. Do you think that Lennar did anything wrong</p> <p>11 in this case? I will ask a better question. Do you</p> <p>12 think that Lennar did anything wrong in its handling</p> <p>13 of the Blue Hills mortgage loan?</p> <p>14 MR. MCGLYNN: Objection as to form.</p> <p>15 A. Yes, I do.</p> <p>16 Q. What?</p> <p>17 A. I think they --</p> <p>18 Q. What do you think they did wrong?</p> <p>19 A. I think they stole the property from us,</p> <p>20 and I think they stole the money from us.</p> <p>21 Q. And what's the basis of that belief?</p> <p>22 A. Back to my understanding of how the whole</p> <p>23 mortgage was put together to begin with, I think</p> <p>24 there was plenty of money put aside in the reserve</p>	<p style="text-align: right;">233</p> <p>1 Q. As of August 2004, did you have any</p> <p>2 prospect of getting a tenant in the door and paying</p> <p>3 rent by January 1, 2005?</p> <p>4 A. In August we had no prospective tenants,</p> <p>5 but whether we could have got somebody in the door</p> <p>6 by January 1, that's anybody's guess at this point.</p> <p>7 Q. In the same way that you now realize that</p> <p>8 the loan documents limit use of the reserves to pay</p> <p>9 principal and interest to \$1 million, do you now</p> <p>10 understand that the loan documents do not allow use</p> <p>11 of the monies to pay real estate taxes at all?</p> <p>12 A. No, I'm still not clear on that.</p> <p>13 Q. Even after meeting with Mr. McGlynn?</p> <p>14 MR. MCGLYNN: Objection. And you don't</p> <p>15 have to answer that question.</p> <p>16 Q. As of August 2005, how long had --</p> <p>17 MR. MCGLYNN: August 2005?</p> <p>18 Q. Sorry. As of August 2004, how long had</p> <p>19 Cushman & Wakefield been looking for a tenant for</p> <p>20 the Blue Hills Office Park?</p> <p>21 A. I'm not sure when they were originally</p> <p>22 hired. You know, somewhere -- six months to a year.</p> <p>23 Q. In light of their lack of success in coming</p> <p>24 up with a tenant, did you have any reasonable basis</p>

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<p style="text-align: right;">238</p> <p>1 wouldn't be able to sit here and tell you how much.</p> <p>2 Q. So that would be a tax liability that Blue</p> <p>3 Hills or its principals would incur that they</p> <p>4 wouldn't have otherwise?</p> <p>5 A. That's correct.</p> <p>6 Q. Would there be any other way that you can</p> <p>7 think of that Blue Hills would be damaged by the</p> <p>8 loss of a property that was not worth as much as its</p> <p>9 debt?</p> <p>10 MR. MCGLYNN: Objection.</p> <p>11 A. I think it was only a question of time when</p> <p>12 the property would be worth more. I mean, you just</p> <p>13 gave a perfect example. You foreclosed for one</p> <p>14 price, you sold it for 5 million more. You have</p> <p>15 OneBeacon moved in there now, and it's probably</p> <p>16 worth as much, if not more, than it was two years</p> <p>17 ago. So the real estate industry -- you know,</p> <p>18 there's ups and downs in the real estate industry;</p> <p>19 but that area is coming back very quickly, and I</p> <p>20 believe that property would come back very quickly.</p> <p>21 Q. Do you know if Blue Hills is working with</p> <p>22 any type of expert to try and quantify damages in</p> <p>23 this case?</p> <p>24 A. Not that I've been made aware of.</p>	<p style="text-align: right;">240</p> <p>1 2004, had called you up and said, "No, we're not</p> <p>2 going to use the reserve monies to pay principal and</p> <p>3 interest or real estate taxes. In fact, we already</p> <p>4 paid the real estate taxes out of our own money,"</p> <p>5 would you have done anything differently than you</p> <p>6 did?</p> <p>7 A. Yes. I think we would have taken a serious</p> <p>8 shot at paying them back the real estate taxes,</p> <p>9 because when you look at it, it's a hundred thousand</p> <p>10 for the real estate taxes versus losing an office</p> <p>11 building worth well in excess of that.</p> <p>12 Q. When you learned from the town of Canton</p> <p>13 that the real estate taxes had been paid, did you</p> <p>14 attempt to confirm with anyone at Wells Fargo or</p> <p>15 Lennar the source of the monies that had paid the</p> <p>16 taxes?</p> <p>17 A. I didn't contact Lennar or Wells Fargo</p> <p>18 about the taxes being paid.</p> <p>19 Q. So the answer is no?</p> <p>20 A. That's correct.</p> <p>21 Q. Did you check with the town of Canton to</p> <p>22 see if the taxes had been paid late?</p> <p>23 A. No.</p> <p>24 Q. Logically, if Wells Fargo had paid the</p>
<p style="text-align: right;">239</p> <p>1 Q. You haven't hired anybody, have you?</p> <p>2 A. Absolutely not.</p> <p>3 Q. Can you take out the August 19 letter from</p> <p>4 Lennar, Exhibit 29. Actually, let me just have a</p> <p>5 minute.</p> <p>6 MR. MCGLYNN: Do you want to take a</p> <p>7 two-minute break?</p> <p>8 MR. FALBY: Yes.</p> <p>9 (Recess.)</p> <p>10 BY MR. FALBY:</p> <p>11 Q. Mr. Donovan, I asked you what Lennar did</p> <p>12 wrong. I didn't mean to leave out Wells Fargo. Do</p> <p>13 you think that Wells Fargo did anything wrong with</p> <p>14 respect to the Blue Hills mortgage loan?</p> <p>15 A. Off the top of my head, I can't think of</p> <p>16 anything.</p> <p>17 Q. When you checked with the town of Canton in</p> <p>18 August 2004 to see if the real estate taxes had been</p> <p>19 paid, did you check and see what date they were</p> <p>20 paid?</p> <p>21 A. No, I did not.</p> <p>22 Q. If Wells Fargo or Lennar on August 3 -- I</p> <p>23 guess that's impossible. Let me rephrase the</p> <p>24 question. If Wells Fargo or Lennar on August 4,</p>	<p style="text-align: right;">241</p> <p>1 taxes only upon receiving your letter, they would</p> <p>2 have paid them no sooner than August 4, when you</p> <p>3 faxed them the letter, right?</p> <p>4 A. That's probably true. I didn't think of</p> <p>5 contacting the town for -- whether it was late or</p> <p>6 not.</p> <p>7 Q. And penalties would have been accrued,</p> <p>8 correct?</p> <p>9 A. In the town of Canton?</p> <p>10 Q. The town of Canton would have assessed</p> <p>11 penalties if the taxes hadn't been paid by August 2,</p> <p>12 correct?</p> <p>13 A. I don't know if they assess penalties or</p> <p>14 they might have had interest or something.</p> <p>15 Q. You did note when you checked with the town</p> <p>16 of Canton that they had assessed neither interest</p> <p>17 nor any penalties, correct?</p> <p>18 A. I had somebody call to check to see if the</p> <p>19 taxes had been paid. The answer I got back was the</p> <p>20 taxes were paid.</p> <p>21 Q. And the person didn't say, "Although they</p> <p>22 were paid late; interest or penalties were</p> <p>23 assessed," correct?</p> <p>24 A. Right.</p>

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<p style="text-align: right;">242</p> <p>1 Q. So the logical conclusion from what they</p> <p>2 told you was that the taxes had been paid on time,</p> <p>3 right?</p> <p>4 A. No, I just didn't even think of that,</p> <p>5 whether they were paid on time or paid late. That</p> <p>6 was not part of the equation.</p> <p>7 Q. Is it also a reason that Blue Hills didn't</p> <p>8 pay the real estate taxes itself that Blue Hills'</p> <p>9 principals had decided not to put any more money</p> <p>10 into the Blue Hills Office Park until they were</p> <p>11 confident that Lennar or Wells Fargo would work with</p> <p>12 them on the loan?</p> <p>13 A. It was my belief at the time that we were</p> <p>14 using our own money to pay part of the -- out of the</p> <p>15 escrows to pay the real estate taxes and pay the --</p> <p>16 so they were putting their own money in at that</p> <p>17 time, the way we looked at it.</p> <p>18 Q. Well, then, I will rephrase the question.</p> <p>19 Is a reason that the Blue Hills principals did not</p> <p>20 put up additional monies to pay the taxes, that is,</p> <p>21 monies apart from monies in the escrow account,</p> <p>22 because they did not intend to put any more dollars</p> <p>23 into the Blue Hills Office Park unless they had some</p> <p>24 assurance from Wells Fargo or Lennar that Wells</p>	<p style="text-align: right;">244</p> <p>1 MR. MCGLYNN: Objection.</p> <p>2 A. I don't think it ever got to that point</p> <p>3 because I thought we were using our own money</p> <p>4 already.</p> <p>5 Q. Well, it did get to that point because you</p> <p>6 didn't make a request for application of the</p> <p>7 reserves to the real estate taxes until August 2 in</p> <p>8 a letter that you mailed, which by the time they got</p> <p>9 it was going to be after the due date for the taxes,</p> <p>10 right?</p> <p>11 A. Whether I was late with that letter or not</p> <p>12 by a couple of days does not mean that they weren't</p> <p>13 going to come out of their pockets for putting in</p> <p>14 additional funds. I don't --</p> <p>15 Q. Just let me ask it this way --</p> <p>16 MR. MCGLYNN: Have you finished your</p> <p>17 answer, Joe?</p> <p>18 A. I don't see where one ties into the other.</p> <p>19 Q. Let me ask it this way: Why didn't Blue</p> <p>20 Hills send Wells Fargo money with which to pay the</p> <p>21 taxes in response to the tax shortage notice so that</p> <p>22 the taxes could be paid on time?</p> <p>23 MR. MCGLYNN: Objection.</p> <p>24 A. I'm back to the same thing we talked about</p>
<p style="text-align: right;">243</p> <p>1 Fargo or Lennar would work with them on the loan?</p> <p>2 MR. MCGLYNN: Objection.</p> <p>3 A. I don't think it ever got to that point</p> <p>4 because the foreclosure letter came out before we</p> <p>5 realized that -- within a short time of the</p> <p>6 foreclosure -- the foreclosure letter came out I</p> <p>7 believe at the same time they said they would not</p> <p>8 apply the real estate taxes.</p> <p>9 Q. That's not what I am asking. The real</p> <p>10 estate taxes are due on August 1, right?</p> <p>11 A. Correct.</p> <p>12 Q. You know that to get there in time you've</p> <p>13 got to send them before August 2, right?</p> <p>14 A. You're probably right.</p> <p>15 Q. And you know that it's the property owner's</p> <p>16 obligation to pay the taxes no matter what, right?</p> <p>17 A. It's the property owner's obligation, yes.</p> <p>18 Q. So is the reason that Blue Hills didn't do</p> <p>19 anything to pay the taxes on time that the Blue</p> <p>20 Hills principals did not intend to take any</p> <p>21 additional monies out of their pockets and put them</p> <p>22 into the project until they got some assurance that</p> <p>23 Lennar or Wells Fargo would work with them on the</p> <p>24 loan?</p>	<p style="text-align: right;">245</p> <p>1 in the past. I thought the money could be used to</p> <p>2 pay real estate taxes.</p> <p>3 Q. So why did you wait until after the taxes</p> <p>4 were already past due to request that reserve monies</p> <p>5 be used to pay the taxes?</p> <p>6 MR. MCGLYNN: Objection.</p> <p>7 A. Probably because I'm a busy guy and it just</p> <p>8 slipped. I was a couple days late.</p> <p>9 Q. You just overlooked it?</p> <p>10 A. I may have.</p> <p>11 MR. MCGLYNN: Objection, asked and</p> <p>12 answered.</p> <p>13 Q. It wasn't that big a deal?</p> <p>14 A. Of course, it's a big deal.</p> <p>15 Q. So how could you possibly have overlooked</p> <p>16 it?</p> <p>17 A. I don't know if it is late. I mean,</p> <p>18 what -- if you look at -- I think if you look at the</p> <p>19 documents for Wells Fargo, when they request a tax</p> <p>20 payment, I think it says right on the document that</p> <p>21 they will charge us a \$500 payment if we're late</p> <p>22 paying, and so --</p> <p>23 Q. That's in Exhibit 3?</p> <p>24 A. (Witness reviews document.)</p>

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C O N F I D E N T I A L

<p>1 Q. What information did you provide that's 2 contained in answer to Interrogatory No. 2? 3 A. As I see No. 2, they are looking for any 4 kind of written information, communication, and 5 there was a number of letters that I produced that 6 we've been talking about today, on August 2 and 7 August 5 and September. 8 Q. Answer No. 2 also asks about oral 9 communications. You have told us in the course of 10 today's testimony all of the oral communications 11 that you had with Wells Fargo or Lennar from late 12 2003 through September 2004, haven't you? 13 A. To the best of my knowledge, yes. 14 Q. You didn't leave any out, did you? 15 A. I don't think so. 16 Q. I didn't forget to ask about any, did I? 17 A. I don't know. 18 Q. Any other information in the interrogatory 19 answers that came from you? 20 A. I'm just getting to No. 3 now. 21 Q. Maybe I can short-circuit this. Do you 22 know who drafted these answers? 23 A. I'm assuming our attorneys drafted the 24 answers.</p>	<p>262</p> <p>1 the mortgage agreement, including inter alia, which 2 means among other things, Paragraph 6(b), 6(c)(i), 3 6(c)(ii), 6(c)(iv), 6(c)(ix) also confirm these 4 understandings referred to above." Is that a true 5 statement? 6 A. I assume so. 7 Q. Based on that sentence, then, is it true 8 that the terms of the mortgage agreement, including, 9 among others, those referenced there, are consistent 10 with the understandings that Blue Hills had as to 11 when the loan reserves could be accessed? 12 A. With the exception of my understanding 13 where I thought that the real estate taxes could be 14 paid out of the escrow funds, the others probably, 15 yes. 16 Q. Now, wait a minute, Mr. Donovan. You told 17 me you didn't know whether the documents allowed 18 payment of the real estate taxes out of the reserve 19 or not even sitting here today, didn't you? 20 MR. MCGLYNN: Objection. 21 A. You have been through this with me many 22 times today. 23 Q. Didn't you tell me that even sitting here 24 today you still don't know whether the loan</p> <p>264</p>
<p>1 Q. Did you review them at any point? 2 A. Yes, I saw them. 3 Q. Before they were finalized? 4 A. Yes, I would assume I did. 5 Q. Do you know for sure? Do you know for sure 6 that you saw them before they were signed? 7 A. I believe I did, yes. 8 Q. Did you note any corrections as you read 9 them? 10 A. I don't remember making any corrections. 11 Q. Actually, why don't you take a minute and 12 do what you were doing: Read the answer to No. 3. 13 I have a question about that. 14 MR. MCGLYNN: Well, I guess he's got to 15 testify as to whether or not he's participated in 16 the answer to Interrogatory No. 3. 17 MR. FALBY: That's fine. 18 A. (Witness reviews document.) I don't think I 19 was part of putting together No. 3. 20 Q. Do you know whether the statements in 21 answer to Interrogatory No. 3 are true? 22 A. They seem to be true, yes. 23 Q. Specifically, is the last sentence of 24 Interrogatory No. 3 true? It states, "The terms of</p> <p>263</p>	<p>1 documents allow payment of the real estate taxes? 2 A. Yes. And that's what I was just trying to 3 tell you then. 4 Q. No, I asked you if the loan documents were 5 consistent with the understandings that Blue Hills 6 had; and you said, "Yes, with the exception of my 7 understanding that the real estate taxes could be 8 paid out of the reserves," obviously implying that 9 you thought that was inconsistent with the loan 10 documents. 11 MR. MCGLYNN: Objection to the form. 12 Q. And then I say, "Wait a minute. You told 13 me you don't know what the loan documents say about 14 the real estate taxes, so how can they be 15 inconsistent?" 16 MR. MCGLYNN: Objection to form. 17 A. I didn't know what the loan documents said 18 until we sat here today and you were going through 19 it point by point. 20 Q. Sitting here now at 5 whatever it is -- 21 MR. MCGLYNN: Quarter of 6. 22 Q. -- quarter of 6 on Valentine's Day, 23 February 14, 2006, do you know whether the mortgage 24 documents allow real estate taxes to be paid out of</p> <p>265</p>

EXHIBIT 4

30(b)(6) Deposition by Gerald S. Fineberg
Volume 1 - April 5, 2006

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Exhibits: 322-332, 334-339

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 05-CV-10506 (WJY)

BLUE HILLS OFFICE PARK LLC

Plaintiff, Defendant-in-Counterclaim

vs.

J.P. MORGAN CHASE BANK, et al.

Defendant

(Complete caption on next page.)

30(b)(6) DEPOSITION OF BLUE HILLS OFFICE PARK LLC

By GERALD S. FINEBERG

Wednesday, April 5, 2006, 9:39 a.m.

DLA Piper Rudnick Gray Cary US LLP

33 Arch Street, 21st Floor

Boston, Massachusetts

----- Reporter: Joan M. Cassidy, RPR, CRR -----

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<p>1 Q. Did you then go into business for yourself?</p> <p>2 A. Yes.</p> <p>3 Q. And under what name did you do business?</p> <p>4 A. Gerald Fineberg Associates.</p> <p>5 Q. What year did you go into business for</p> <p>6 yourself doing business under the name Gerald</p> <p>7 Fineberg Associates?</p> <p>8 A. Early '60s.</p> <p>9 Q. And what was the business of Gerald</p> <p>10 Fineberg Associates when you started?</p> <p>11 A. Renting apartments, managing buildings,</p> <p>12 apartment buildings.</p> <p>13 Q. And have you continued since the early '60s</p> <p>14 to rent apartments and manage apartment buildings?</p> <p>15 A. Yes.</p> <p>16 Q. And at some point did you start buying</p> <p>17 apartment buildings?</p> <p>18 A. Yes.</p> <p>19 Q. When?</p> <p>20 A. Early '60s.</p> <p>21 Q. Over the last 40 plus years, can you tell</p> <p>22 me approximately how many apartment buildings you've</p> <p>23 bought?</p> <p>24 A. A lot, hundreds, a hundred.</p>	<p>1 A. That's the '80s.</p> <p>2 Q. And beginning in the 1980s, you started</p> <p>3 buying office buildings and retail space; is that</p> <p>4 right?</p> <p>5 A. That's correct.</p> <p>6 Q. And over the last 20 plus years, how many</p> <p>7 office buildings have you bought?</p> <p>8 A. I don't know.</p> <p>9 Q. Approximately?</p> <p>10 A. Ten, twenty -- twenty.</p> <p>11 Q. And each time that you bought an office</p> <p>12 building, did you finance the purchase with mortgage</p> <p>13 financing?</p> <p>14 A. Yes.</p> <p>15 Q. With commercial real estate lenders?</p> <p>16 A. Yes.</p> <p>17 Q. And when you bought those 20 plus office</p> <p>18 buildings, -- strike that. When you bought those 20</p> <p>19 or so office buildings, did you negotiate the</p> <p>20 financing yourself?</p> <p>21 A. Not always.</p> <p>22 Q. Did you participate in the financing</p> <p>23 negotiations for all of the buildings?</p> <p>24 A. Not always.</p>
<p>1 Q. And each time you bought one of those one</p> <p>2 hundred or so apartment buildings, did you finance</p> <p>3 it with mortgage financing?</p> <p>4 A. Yes.</p> <p>5 Q. Over the last 40 plus years, have you sold</p> <p>6 apartment buildings?</p> <p>7 A. Yes.</p> <p>8 Q. Approximately how many?</p> <p>9 A. I don't know. Many.</p> <p>10 Q. How many do you own today?</p> <p>11 MR. MCGLYNN: Apartment buildings?</p> <p>12 MR. FALBY: Yes.</p> <p>13 A. Thirty, forty, maybe more.</p> <p>14 Q. Is it fair to say that you have sold</p> <p>15 somewhere in the neighborhood of 60 or 70 buildings?</p> <p>16 A. Yes.</p> <p>17 Q. At some point you branched out into</p> <p>18 commercial real estate as well, did you?</p> <p>19 A. Yes.</p> <p>20 Q. Approximately when was that?</p> <p>21 A. In the '80s sometime.</p> <p>22 Q. Your Website says that Fineberg Management</p> <p>23 began expanding into commercial real estate in 1983.</p> <p>24 Is that accurate?</p>	<p>1 Q. How many of the sales -- strike that. As</p> <p>2 to how many of the office buildings did you</p> <p>3 negotiate the financing?</p> <p>4 A. I can't recall exactly, but...</p> <p>5 Q. Most of them?</p> <p>6 MR. MCGLYNN: Don't guess.</p> <p>7 A. A lot of them, a lot of them.</p> <p>8 Q. Similarly, with respect to the hundred or</p> <p>9 so apartment buildings you've bought over the last</p> <p>10 40 plus years, did you participate in negotiating</p> <p>11 the mortgage financing to buy all of those</p> <p>12 buildings?</p> <p>13 A. Most of them.</p> <p>14 Q. Who negotiated the mortgage financing as to</p> <p>15 the apartment buildings and office buildings that</p> <p>16 you bought that you didn't negotiate?</p> <p>17 A. Either Dan Frank or my attorney.</p> <p>18 Q. Which attorney?</p> <p>19 A. Bernkopf Goodman.</p> <p>20 Q. Were either you or Dan Frank involved as</p> <p>21 the business people in all of the acquisitions that</p> <p>22 you've had over the years?</p> <p>23 A. Sorry. Could you repeat that.</p> <p>24 Q. Sure. Were either you or Dan Frank</p>

4 (Pages 10 to 13)

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<p style="text-align: right;">10</p> <p>1 involved in the negotiation of the financing for all</p> <p>2 of the acquisitions that you've done over the years?</p> <p>3 A. With our attorney, yes.</p> <p>4 Q. And how many retail buildings have you</p> <p>5 bought in the last 20 plus years?</p> <p>6 A. A dozen -- ten, ten.</p> <p>7 Q. Each of those was financed with mortgage</p> <p>8 financing, was it?</p> <p>9 A. Yes.</p> <p>10 Q. And with respect to most of those buildings</p> <p>11 did you negotiate the financing with a commercial</p> <p>12 real estate lender?</p> <p>13 A. Either myself, Dan Frank or the attorney.</p> <p>14 Q. With respect to how many of those ten or so</p> <p>15 retail buildings did you personally participate in</p> <p>16 negotiating the mortgage financing?</p> <p>17 A. Most of them.</p> <p>18 Q. And how many of the 20 or so office</p> <p>19 buildings that you bought over time have you sold?</p> <p>20 A. Most of them.</p> <p>21 Q. And while you owned them you managed them,</p> <p>22 did you?</p> <p>23 A. Yes.</p> <p>24 Q. How many of the ten or so retail buildings</p>	<p style="text-align: right;">12</p> <p>1 in Freeport.</p> <p>2 A. We have all these.</p> <p>3 Q. Do you own any other retail buildings</p> <p>4 today?</p> <p>5 A. Yes.</p> <p>6 Q. What other retail buildings do you own</p> <p>7 today?</p> <p>8 A. There's one on Brighton Avenue. It's new.</p> <p>9 Q. What address is that?</p> <p>10 A. I don't remember the number, but it's</p> <p>11 Brighton Avenue in Boston.</p> <p>12 Q. In Brighton?</p> <p>13 A. Right, Brighton.</p> <p>14 Q. Is it fair to say that as of 1999, you had</p> <p>15 40 years of experience in the real estate industry?</p> <p>16 A. Yes.</p> <p>17 Q. And you had substantial experience as of</p> <p>18 1999 in acquiring residential and commercial real</p> <p>19 estate buildings?</p> <p>20 A. Yes.</p> <p>21 Q. And in selling residential and commercial</p> <p>22 real estate buildings?</p> <p>23 A. Yes.</p> <p>24 Q. And in financing commercial and residential</p>
<p style="text-align: right;">11</p> <p>1 that you bought over time have you sold?</p> <p>2 A. Half of them -- more than half.</p> <p>3 Q. Most of them?</p> <p>4 A. Most of them.</p> <p>5 Q. While you owned the retail space, I take it</p> <p>6 you managed that space as well?</p> <p>7 A. Your.</p> <p>8 Q. Your Website today lists two office</p> <p>9 buildings, 358 Chestnut Hill Avenue in Brighton and</p> <p>10 One Washington Street in Wellesley. Are those the</p> <p>11 two remaining office buildings that you own today?</p> <p>12 A. Yes.</p> <p>13 Q. And your Website lists three retail spaces</p> <p>14 in metro Boston and one in Freeport, Maine. Do you</p> <p>15 own those spaces?</p> <p>16 A. Yes.</p> <p>17 Q. Do you own any other retail spaces?</p> <p>18 A. What is listed there? I'm sorry.</p> <p>19 Q. Let me --</p> <p>20 A. (Witness reviews document.)</p> <p>21 Q. While you look at that, I'll say for the</p> <p>22 record that your Website lists 1410 Beacon Street in</p> <p>23 Brookline, 294 Harvard Street in Brookline, and 320</p> <p>24 Moody Street in Waltham, as well as 100 Main Street</p>	<p style="text-align: right;">13</p> <p>1 real estate buildings?</p> <p>2 A. Yes.</p> <p>3 Q. And in managing commercial and residential</p> <p>4 real estate buildings?</p> <p>5 A. Yes.</p> <p>6 Q. As of 1999, were you still working</p> <p>7 full-time?</p> <p>8 A. '99, yes.</p> <p>9 Q. I understand that today you spend some of</p> <p>10 your time in Florida?</p> <p>11 A. Most of my time.</p> <p>12 Q. When are you here in Massachusetts?</p> <p>13 A. During the summer.</p> <p>14 Q. And the rest of the three seasons you spend</p> <p>15 in Florida?</p> <p>16 A. Most of the other time in Florida, yes.</p> <p>17 Q. And how much time do you spend when you are</p> <p>18 in Florida devoted to your -- strike that. How</p> <p>19 much time do you spend when you are in Florida</p> <p>20 working on your real estate business?</p> <p>21 A. I don't know, not much.</p> <p>22 Q. How much time do you spend on it when you</p> <p>23 are up here during the summer?</p> <p>24 A. Part-time.</p>

6 (Pages 18 to 21)

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<p style="text-align: right;">18</p> <p>1 points were?</p> <p>2 A. I knew the basic points.</p> <p>3 Q. What points did you know?</p> <p>4 A. I knew the amounts and the rate.</p> <p>5 Q. Did you know anything else?</p> <p>6 A. Just what Mr. Goldberg explained to me, and</p> <p>7 I can't recall right now, but he went over the</p> <p>8 document with me.</p> <p>9 Q. On that occasion did he actually sit with</p> <p>10 loan documents and point out particular provisions?</p> <p>11 A. No.</p> <p>12 Q. On that occasion did he merely talk to you</p> <p>13 and explain without showing you the documents the</p> <p>14 salient points that were in them?</p> <p>15 A. Yes.</p> <p>16 Q. Can you recall any particular points that</p> <p>17 were explained to you?</p> <p>18 A. No.</p> <p>19 Q. You knew in 1999, when you refinanced Blue</p> <p>20 Hills Office Park with Credit Suisse, that that loan</p> <p>21 was going to be securitized, correct?</p> <p>22 A. Yes.</p> <p>23 Q. And as of 1999 you had substantial</p> <p>24 experience with securitized loans, did you not?</p>	<p style="text-align: right;">20</p> <p>1 Q. Does this letter accurately describe the</p> <p>2 securitized loans that you had closed as of</p> <p>3 September 7, 1999?</p> <p>4 A. Yes.</p> <p>5 Q. I added up the loans listed here, and it</p> <p>6 adds up to 27 securitized loans that you had done as</p> <p>7 of September 7, 1999. Does that sound right?</p> <p>8 A. Yes.</p> <p>9 Q. And I added up the amounts listed in these</p> <p>10 paragraphs. They added up to approximately \$146</p> <p>11 million at least. Does that sound about right for</p> <p>12 the amount of money that you borrowed through</p> <p>13 securitized loans as of this date?</p> <p>14 A. Yes.</p> <p>15 Q. As a result of your prior experience with</p> <p>16 securitized loans, you knew that securitized loans</p> <p>17 were assigned by the originating banks to loan</p> <p>18 pools, correct?</p> <p>19 MR. MCGLYNN: Objection. You may</p> <p>20 answer.</p> <p>21 A. Yes.</p> <p>22 Q. And you knew that after the originating</p> <p>23 bank assigned a loan to the loan pool, it would have</p> <p>24 no further involvement with the loan thereafter,</p>
<p style="text-align: right;">19</p> <p>1 MR. MCGLYNN: Objection as to the form.</p> <p>2 You may answer.</p> <p>3 A. Yes.</p> <p>4 Q. You had closed many securitized loans at</p> <p>5 that point, hadn't you?</p> <p>6 A. Yes.</p> <p>7 Q. Let me show you a document that I'll mark</p> <p>8 as our next exhibit.</p> <p>9 MR. FALBY: Anybody know the number?</p> <p>10 MR. MCGLYNN: I did not bring that</p> <p>11 number with me. I would have if it was my</p> <p>12 deposition. Do we have a courtesy copy, Bruce, for</p> <p>13 counsel?</p> <p>14 MR. FALBY: We sure do. Off the record</p> <p>15 for a second.</p> <p>16 (Recess.)</p> <p>17 BY MR. FALBY:</p> <p>18 Q. Mr. Fineberg, I've handed you a letter</p> <p>19 dated September 7, 1999, from Bernkopf Goodman to</p> <p>20 Schulte Roth, which represented Credit Suisse. This</p> <p>21 letter responds, it says, to an inquiry regarding</p> <p>22 prior securitized loans closed by entities owned or</p> <p>23 controlled by Gerald S. Fineberg; do you see that?</p> <p>24 A. (Witness reviews document.) Yes.</p>	<p style="text-align: right;">21</p> <p>1 correct?</p> <p>2 MR. MCGLYNN: Objection.</p> <p>3 A. Yes.</p> <p>4 Q. And you knew that once the loan was</p> <p>5 assigned to the pool, it would be serviced by a</p> <p>6 servicer, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you knew that the servicers for the</p> <p>9 loan pool serviced the loans in accordance with the</p> <p>10 loan documents, correct?</p> <p>11 MR. MCGLYNN: Objection, calls for a</p> <p>12 legal conclusion and objection as to the form.</p> <p>13 Q. You can answer.</p> <p>14 A. Can you say that again.</p> <p>15 Q. You knew that loan pool servicers serviced</p> <p>16 the loans in their pools in accordance with the loan</p> <p>17 documents of a particular loan, correct?</p> <p>18 MR. MCGLYNN: Same objection.</p> <p>19 THE WITNESS: Sorry?</p> <p>20 MR. MCGLYNN: Same objection, Jerry.</p> <p>21 I --</p> <p>22 Q. He's just doing his job. You can answer.</p> <p>23 MR. MCGLYNN: If you can answer, go</p> <p>24 ahead, please.</p>

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<p>22</p> <p>1 A. Yes.</p> <p>2 Q. And you knew that if the loan got in</p> <p>3 trouble, it would go to a special servicer, correct?</p> <p>4 MR. MCGLYNN: Objection.</p> <p>5 A. Yes.</p> <p>6 Q. And you knew that the task of the special</p> <p>7 servicer was to deal with a troubled loan and either</p> <p>8 try to work it out or take back a deed in lieu of</p> <p>9 foreclosure or foreclose on the loan, correct?</p> <p>10 MR. MCGLYNN: Objection, legal</p> <p>11 conclusion and form.</p> <p>12 A. Yes.</p> <p>13 Q. Now, as of 1999, can you tell me how many</p> <p>14 of the loans that are listed in this letter had</p> <p>15 either gone into default or gotten into some other</p> <p>16 kind of trouble and actually gone to a special</p> <p>17 servicer?</p> <p>18 A. No, I can't.</p> <p>19 Q. As of September 7, 1999, you had had loans</p> <p>20 that had been taken over by a special servicer,</p> <p>21 correct?</p> <p>22 A. I don't know.</p> <p>23 Q. As of 1999, you had had securitized loans</p> <p>24 where the property had actually been foreclosed</p>	<p>24</p> <p>1 A. 1990?</p> <p>2 Q. 1999.</p> <p>3 A. Oh, 1999. Seventeen or eighteen.</p> <p>4 Q. All financed with mortgage financing from a</p> <p>5 commercial real estate lender?</p> <p>6 A. Yes.</p> <p>7 Q. On deals, at least some of which you had</p> <p>8 negotiated?</p> <p>9 A. Yes.</p> <p>10 Q. Now, as of 1999, some of those hotels had</p> <p>11 been foreclosed upon, correct?</p> <p>12 A. I don't know when -- the dates. Could you</p> <p>13 help me?</p> <p>14 Q. Sure. There was a hotel in Sturbridge,</p> <p>15 Massachusetts, that was foreclosed upon; do you</p> <p>16 recall that?</p> <p>17 A. Yes.</p> <p>18 Q. Who was the lender for that hotel?</p> <p>19 A. Lennar.</p> <p>20 Q. And what was the resolution of that hotel?</p> <p>21 Was it a deed in lieu of foreclosure or an actual</p> <p>22 foreclosure?</p> <p>23 A. I'm not sure. I think it was a deed in</p> <p>24 lieu. But I'm not sure. Can you help me?</p>
<p>23</p> <p>1 upon, did you not?</p> <p>2 A. I don't know what these loans are.</p> <p>3 Q. Fair enough.</p> <p>4 MR. FALBY: Let's mark this letter dated</p> <p>5 September 7, 1999, as Exhibit 322.</p> <p>6 (Marked, Exhibit 322, Letter dated</p> <p>7 September 7, 1999.)</p> <p>8 Q. As of September 7, 1999 -- actually, before</p> <p>9 I do that, I forgot to ask you about your hotel</p> <p>10 business. You also, as part of your real estate</p> <p>11 business, went into the hotel business around 1990,</p> <p>12 did you?</p> <p>13 A. Just before 1990, in the '80s.</p> <p>14 Q. And you actually formed a separate company</p> <p>15 called Fine Hotels, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And that was distinct from your other real</p> <p>18 estate company which is called Fineberg Management?</p> <p>19 A. Yes.</p> <p>20 Q. When did Gerald Fineberg Associates become</p> <p>21 Fineberg Management?</p> <p>22 A. I can't recall but in the '70s.</p> <p>23 Q. Now, as of 1999, approximately how many</p> <p>24 hotels had you purchased?</p>	<p>25</p> <p>1 Q. I think it was a deed in lieu.</p> <p>2 A. It was a deed in lieu.</p> <p>3 MR. MCGLYNN: Don't take his word for</p> <p>4 it.</p> <p>5 Q. I didn't do it, I'm pretty sure it was a</p> <p>6 deed in lieu. Were you involved with negotiating</p> <p>7 the deed in lieu of foreclosure for the Sturbridge</p> <p>8 hotel?</p> <p>9 A. Most of the negotiations were done by my</p> <p>10 attorney.</p> <p>11 Q. Ken Goldberg?</p> <p>12 A. Yes.</p> <p>13 Q. Did he consult with you from time to time</p> <p>14 during the course of the negotiation?</p> <p>15 A. Yes.</p> <p>16 Q. So you were involved through him as that</p> <p>17 progressed?</p> <p>18 A. Yes.</p> <p>19 Q. And do you recall that there was a hotel in</p> <p>20 Lancaster, Pennsylvania, that went into default?</p> <p>21 A. Yes.</p> <p>22 Q. And you lost that hotel as well, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And that was another deed in lieu of</p>

8 (Pages 26 to 29)

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<p style="text-align: right;">26</p> <p>1 foreclosure, was it?</p> <p>2 A. Yes.</p> <p>3 Q. Were you involved with the negotiation of</p> <p>4 that deed in lieu of foreclosure?</p> <p>5 A. Again, that was Ken Goldberg who did the</p> <p>6 negotiation, but he conferred with me.</p> <p>7 Q. You were the client who was directing him,</p> <p>8 as the attorney, as he negotiated with Lennar, the</p> <p>9 lender or the servicer for the lender?</p> <p>10 A. Yes.</p> <p>11 MR. FALBY: Off the record.</p> <p>12 (Discussion off the record.)</p> <p>13 Q. When you did those -- strike that. During</p> <p>14 those negotiations with Lennar, did you sign</p> <p>15 prenegotiation letters?</p> <p>16 A. I believe I did.</p> <p>17 Q. Do you understand what a prenegotiation</p> <p>18 letter is?</p> <p>19 A. Yes.</p> <p>20 Q. What is it?</p> <p>21 A. It's a letter that says that you sign this</p> <p>22 letter so that they will negotiate with you.</p> <p>23 Q. Do you understand why they want you to sign</p> <p>24 it before they negotiate with you?</p>	<p style="text-align: right;">28</p> <p>1 A. I don't recall right now, no. I'd have to</p> <p>2 see it.</p> <p>3 Q. Let me show you Exhibit 62. Do you</p> <p>4 recognize this as the prenegotiation letter that you</p> <p>5 were asked to sign in connection with the Blue Hills</p> <p>6 Office Park loan?</p> <p>7 A. (Witness reviews document.) Yes.</p> <p>8 Q. Did you read it when you signed it?</p> <p>9 A. I can't recall, but I might have.</p> <p>10 Q. That is your signature on the last page,</p> <p>11 correct?</p> <p>12 A. That is my signature.</p> <p>13 Q. And if you didn't read it, did your</p> <p>14 attorney explain the significance of the letter</p> <p>15 before you signed it?</p> <p>16 MR. MCGLYNN: Just answer yes or no.</p> <p>17 A. Yes.</p> <p>18 Q. And do you see that in the first paragraph</p> <p>19 it says "negotiations," the last two sentences say</p> <p>20 that the borrower agrees that none of the trustee,</p> <p>21 the master servicer, or the special servicer is</p> <p>22 under any obligation to consent or otherwise agree</p> <p>23 to any borrower request?</p> <p>24 MR. MCGLYNN: You are referring, Bruce,</p>
<p style="text-align: right;">27</p> <p>1 A. Not exactly, no.</p> <p>2 Q. Do you understand that the point of it from</p> <p>3 the lender's point of view is to prevent the</p> <p>4 borrower from making any claims based on the</p> <p>5 negotiations?</p> <p>6 MR. MCGLYNN: Objection as to form,</p> <p>7 calls for a legal conclusion.</p> <p>8 A. I don't know.</p> <p>9 Q. And do you understand that the borrower in</p> <p>10 those letters waives any right to complain about the</p> <p>11 lender's failure to do something or something the</p> <p>12 lender did in the course of the negotiations?</p> <p>13 MR. MCGLYNN: Same objections.</p> <p>14 A. I would ask my attorney and he would give</p> <p>15 me the answer.</p> <p>16 Q. Based on your prior experience, do you have</p> <p>17 any idea what the point of the prenegotiation letter</p> <p>18 is, why it is that you're asked to sign it before</p> <p>19 negotiations begin?</p> <p>20 A. I thought it was always automatic, to sit</p> <p>21 down and negotiate.</p> <p>22 Q. I'm focusing on the letter itself. Do you</p> <p>23 understand what the point was of signing the letter</p> <p>24 prior to doing any negotiating?</p>	<p style="text-align: right;">29</p> <p>1 to the first numbered paragraph titled</p> <p>2 "Negotiations" in bold?</p> <p>3 MR. FALBY: I am.</p> <p>4 MR. MCGLYNN: As opposed to the first</p> <p>5 paragraph of the letter?</p> <p>6 MR. FALBY: Yes.</p> <p>7 MR. MCGLYNN: Maybe you can rephrase or</p> <p>8 restate the question.</p> <p>9 MR. FALBY: Sure.</p> <p>10 Q. Do you see the paragraph numbered 1? It</p> <p>11 says "Negotiations."</p> <p>12 A. Yes.</p> <p>13 Q. Do you see the next-to-the-last sentence</p> <p>14 that begins, "The borrower also acknowledges"?</p> <p>15 A. Yup, yes.</p> <p>16 Q. And do you see that it goes on to say as I</p> <p>17 just read, that the borrower agrees that none of the</p> <p>18 trustee, the master servicer, or the special</p> <p>19 servicer is under any obligation to consent or</p> <p>20 otherwise agree to any borrower request with respect</p> <p>21 to the loan?</p> <p>22 A. Yes.</p> <p>23 Q. And do you see that the next paragraph says</p> <p>24 that no party shall have any defense to any action</p>

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<p>30</p> <p>1 nor assert any waiver based on any communications 2 that take place after the letter is signed? 3 A. I see it. 4 Q. And do you see that in the paragraph 5 numbered 2 the parties release any claims that they 6 might possibly have arising out of any 7 communications that take place after the letter is 8 signed? 9 A. Yes. 10 Q. And do you see on the next page in the 11 paragraph numbered 4 in the middle of the paragraph 12 that the parties agree that by signing the letter 13 they are precluded, that is, prevented, from 14 claiming that any agreement, consent, waiver, 15 release, modification, et cetera, of the loan has 16 been effected? Do you see that? 17 MR. MCGLYNN: You are asking him to read 18 it? 19 MR. FALBY: Yes. 20 A. Yes. 21 Q. And did you understand that the letter said 22 these things and had this effect when you signed it? 23 MR. MCGLYNN: Objection. 24 A. No.</p>	<p>32</p> <p>1 Q. What other hotels had you given back? 2 A. There were a couple. I can't recall right 3 now. I'd have to look it up. 4 Q. Had you given back a hotel in Harrisburg? 5 A. Yes. 6 Q. And when did you give that back? 7 A. About a year before. 8 Q. Approximately 1998? 9 A. Yes. 10 Q. Who was the special servicer on that deal? 11 A. I don't know. 12 Q. Do you know who took it back? 13 A. I don't know. 14 Q. Was GMAC the lender on that? 15 A. They could have been, yes. 16 Q. Were you involved with the -- strike that. 17 Was Harrisburg a deed in lieu or a foreclosure? 18 A. I don't know. 19 Q. Were you involved in negotiating that 20 resolution, whether it was a deed in lieu or a 21 foreclosure? 22 A. Yes. 23 Q. And did you sign a prenegotiation letter 24 when you dealt with the Harrisburg default?</p>
<p>31</p> <p>1 Q. But you did either read the letter or have 2 it explained to you by your attorney before you 3 signed it; is that right? 4 A. Yes. 5 Q. And this Exhibit 62, is this similar in 6 form to prenegotiation letters that you had signed 7 in the past? 8 A. I think so. I don't know for sure. Once I 9 see one, I could tell you. 10 Q. And you do know that on prior occasions, 11 before discussing a troubled loan with a lender, you 12 were asked to sign prenegotiation letters like this 13 one, right? 14 A. Yes. I thought it was automatic. 15 Q. Were there other hotels that you ended up 16 giving back to lenders prior to 1999? 17 A. When did -- off the record? 18 Q. You can go off the record, sure. 19 (Discussion off the record.) 20 Q. As of September 1999, when you borrowed 21 money from Credit Suisse, had you given back any 22 hotels to lenders other than Sturbridge or 23 Lancaster? 24 A. Yes.</p>	<p>33</p> <p>1 A. I don't know. I might have. 2 Q. There was also a hotel in Boxborough that 3 you gave back, correct? 4 A. Yes -- no. I think I sold it to -- I don't 5 know. I owned the hotel. I no longer own it. I 6 don't know the circumstance. 7 Q. You're not sure whether you gave it back to 8 the lender or sold it? 9 A. Sold it to -- I think there was a 10 simultaneous sale. 11 Q. You sold Boxborough to a third party -- 12 A. Right. 13 Q. -- after the loan went into default? 14 MR. MCGLYNN: Objection. 15 Q. Did it not go into default? 16 A. Yes, it did go into default. 17 Q. And as part of the workout of that loan, 18 you ended up selling it to a third party? 19 A. Yes. 20 Q. And were you involved in that negotiation? 21 A. Yes, but mostly through my attorney. 22 Q. And the lender on the Boxborough hotel was 23 who? 24 A. I don't know.</p>

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<p style="text-align: right;">34</p> <p>1 Q. Who was the special servicer on that deal?</p> <p>2 A. I don't know.</p> <p>3 Q. Was there a special servicer? Was it a</p> <p>4 securitized loan?</p> <p>5 A. It was a securitized loan.</p> <p>6 Q. But you don't remember the --</p> <p>7 A. I don't remember the --</p> <p>8 Q. I have to ask the question. You don't</p> <p>9 remember who the special servicer was who serviced</p> <p>10 the Boxborough loan?</p> <p>11 A. I don't recall.</p> <p>12 Q. Was there also a hotel in Worcester that</p> <p>13 you ended up giving back?</p> <p>14 A. Yes.</p> <p>15 Q. Was that a deed in lieu of foreclosure or a</p> <p>16 foreclosure sale?</p> <p>17 A. It was the same as Boxborough. It was the</p> <p>18 same transaction.</p> <p>19 Q. With respect to the workout of the</p> <p>20 Boxborough and Worcester hotels, did you sign a</p> <p>21 prenegotiation letter before you dealt with the</p> <p>22 lender on those deals?</p> <p>23 A. I don't know.</p> <p>24 Q. And you did participate in the negotiation</p>	<p style="text-align: right;">36</p> <p>1 in Exhibit 322?</p> <p>2 A. Well, Credit Suisse.</p> <p>3 Q. Any others?</p> <p>4 A. There may have been. I can't recall.</p> <p>5 Q. Is Exhibit 322 accurate, that you had</p> <p>6 closed securitized loans as of September 7, 1999,</p> <p>7 with the Chase Manhattan Bank, Heller Finance, GMAC,</p> <p>8 and GECC?</p> <p>9 A. Yes.</p> <p>10 Q. Now, after 1999 did any of your securitized</p> <p>11 loans other than the Blue Hills loan ever go into</p> <p>12 default?</p> <p>13 MR. MCGLYNN: This is after September 7,</p> <p>14 1999, Bruce?</p> <p>15 MR. FALBY: Yes.</p> <p>16 A. I can't recall.</p> <p>17 Q. Did any of the loans listed in Exhibit 322</p> <p>18 subsequently go into default, that is, subsequent to</p> <p>19 September 7, 1999?</p> <p>20 MR. MCGLYNN: Well, I'm going to just</p> <p>21 object.</p> <p>22 A. I don't know, they don't give addresses or</p> <p>23 names.</p> <p>24 MR. MCGLYNN: There's no enumeration of</p>
<p style="text-align: right;">35</p> <p>1 of that workout?</p> <p>2 A. Mostly with my attorney, yes.</p> <p>3 Q. And what year was that?</p> <p>4 A. (Pause.) Close --</p> <p>5 Q. Was it --</p> <p>6 A. Go ahead.</p> <p>7 Q. What year was it?</p> <p>8 A. I don't recall.</p> <p>9 Q. Was it prior to September 7, 1999, when you</p> <p>10 borrowed money from Credit Suisse?</p> <p>11 A. I think so.</p> <p>12 Q. Approximately what year?</p> <p>13 MR. MCGLYNN: He said he didn't recall.</p> <p>14 A. I don't recall.</p> <p>15 Q. Was it before you gave back the Sturbridge</p> <p>16 and Lancaster hotels?</p> <p>17 A. It was either a little before or a little</p> <p>18 after. I don't remember.</p> <p>19 Q. Can you tell me the commercial real estate</p> <p>20 lenders with whom you have closed securitized loans?</p> <p>21 Some of them are in the letter we have marked as</p> <p>22 Exhibit 322. I guess a better question would be,</p> <p>23 are there any other lenders with whom you have ever</p> <p>24 closed a securitized loan other than the ones listed</p>	<p style="text-align: right;">37</p> <p>1 what those loans are on this exhibit, Bruce.</p> <p>2 Q. Do you recall any securitized loans --</p> <p>3 strike that. Were all of the hotels we've talked</p> <p>4 about securitized loans?</p> <p>5 A. Yes.</p> <p>6 Q. And that is all of Lancaster, Sturbridge,</p> <p>7 Harrisburg, Boxborough, and Worcester, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Other than those five hotels and Blue Hills</p> <p>10 Office Park, have you ever had a securitized loan go</p> <p>11 into default or get into trouble?</p> <p>12 A. Yes.</p> <p>13 Q. What loan or loans?</p> <p>14 A. A hotel in Mansfield.</p> <p>15 Q. Who was the lender for that hotel?</p> <p>16 A. I can't remember the name.</p> <p>17 Q. What happened with that hotel?</p> <p>18 A. Worked it out.</p> <p>19 Q. In what way?</p> <p>20 A. Renegotiated the loan and paid them money.</p> <p>21 Q. Who was the special servicer on that loan?</p> <p>22 A. I don't know the name.</p> <p>23 Q. What year was that?</p> <p>24 A. Around the same time.</p>

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<p>1 Q. As what?</p> <p>2 A. 1998, '99.</p> <p>3 Q. And did you sign a prenegotiation letter on</p> <p>4 that deal?</p> <p>5 A. I can't recall.</p> <p>6 Q. You assume you did because they were</p> <p>7 automatic, but you don't remember?</p> <p>8 MR. MCGLYNN: Objection.</p> <p>9 A. Yes.</p> <p>10 Q. The answer is yes?</p> <p>11 A. Yes.</p> <p>12 Q. Have you ever had any other securitized</p> <p>13 loans go into default?</p> <p>14 A. I might have. I can't remember right now.</p> <p>15 Q. Did you ever have any property in Florida</p> <p>16 that went in default?</p> <p>17 A. Yes.</p> <p>18 Q. What property was that?</p> <p>19 A. Orlando.</p> <p>20 Q. What kind of property was it, a hotel?</p> <p>21 A. Hotel.</p> <p>22 Q. Who was the lender on that?</p> <p>23 A. I can't remember their name. I can't.</p> <p>24 Q. Do you know who the special servicer was on</p>	<p>38</p>	<p>1 flow and made it impossible to --</p> <p>2 A. Close the hotel.</p> <p>3 Q. The hurricanes caused you to close the</p> <p>4 hotel?</p> <p>5 A. Right, yes.</p> <p>6 Q. So you were unable to make debt service</p> <p>7 payments on the loan?</p> <p>8 A. Yes.</p> <p>9 Q. So you gave it back?</p> <p>10 A. Yes.</p> <p>11 Q. Are there any other securitized -- strike</p> <p>12 that. On that Orlando deal, did you sign a</p> <p>13 prenegotiation letter before you entered into the</p> <p>14 negotiation?</p> <p>15 A. I can't recall but I assume so.</p> <p>16 Q. Are there any other properties that you've</p> <p>17 financed through securitized loans that have</p> <p>18 subsequently gone into default?</p> <p>19 A. I can't recall right now.</p> <p>20 Q. After you did the Blue Hills Office Park</p> <p>21 refinancing in 1999, did you continue to close</p> <p>22 additional securitized loans in the following years?</p> <p>23 A. I don't know. I can't recall.</p> <p>24 Q. Do you know if the Blue Hills Office Park</p>	<p>40</p>
<p>1 that loan?</p> <p>2 A. No, I can't.</p> <p>3 Q. It was a securitized loan?</p> <p>4 A. Yes.</p> <p>5 Q. What happened with that loan?</p> <p>6 A. We gave it back.</p> <p>7 Q. With a deed in lieu of foreclosure?</p> <p>8 A. I can't remember.</p> <p>9 Q. It was either a deed or a foreclosure sale?</p> <p>10 A. Yes.</p> <p>11 Q. When was that?</p> <p>12 A. The year of the hurricanes in Orlando, two</p> <p>13 years ago.</p> <p>14 Q. 2004?</p> <p>15 A. It could be.</p> <p>16 Q. Was it before or after the Blue Hills</p> <p>17 Office Park foreclosure sale?</p> <p>18 A. I don't know.</p> <p>19 Q. What hurricane are you thinking of?</p> <p>20 A. The three that hit Orlando.</p> <p>21 Q. How soon after the hurricanes was the</p> <p>22 property given back?</p> <p>23 A. Two or three months.</p> <p>24 Q. I take it the hurricanes impacted your cash</p>	<p>39</p>	<p>1 refinancing was the last securitized loan you've</p> <p>2 ever done?</p> <p>3 A. I don't recall if I did one after or not.</p> <p>4 (The witness and his counsel confer.)</p> <p>5 MR. MCGLYNN: Mr. Fineberg would like to</p> <p>6 take a two-minute break.</p> <p>7 MR. FALBY: Yes, sure.</p> <p>8 MR. MCGLYNN: Off the record.</p> <p>9 (Recess.)</p> <p>10 BY MR. FALBY:</p> <p>11 Q. Mr. Fineberg, in the fall of 2004, were you</p> <p>12 down in Florida?</p> <p>13 A. Yes -- well, some of the time.</p> <p>14 MR. MCGLYNN: At any time?</p> <p>15 Q. What part of the time?</p> <p>16 A. I don't know.</p> <p>17 Q. In 2004 had you settled into your present</p> <p>18 pattern of spending all but the summer down in</p> <p>19 Florida?</p> <p>20 A. Most of it.</p> <p>21 Q. So is it correct that in 2004 you spent the</p> <p>22 summer up here and then went down to Florida in the</p> <p>23 fall?</p> <p>24 A. Yes.</p>	<p>41</p>

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<p>1 A. Yes.</p> <p>2 Q. I take it he negotiated it with Andrew</p> <p>3 Cohn, Mr. Langelier's lawyer?</p> <p>4 A. Yes.</p> <p>5 Q. The agreement refers to various accounts.</p> <p>6 Are you familiar with the accounts that were held or</p> <p>7 controlled by Royall Associates Realty Trust as of</p> <p>8 December 2004?</p> <p>9 A. Which paragraph are you looking at?</p> <p>10 Q. On page 2 there's a heading called</p> <p>11 "Treatment of Accounts."</p> <p>12 MR. MCGLYNN: (Indicating.)</p> <p>13 A. Oh, here.</p> <p>14 Q. And then on page 2 there are descriptions</p> <p>15 of three different accounts; do you see that?</p> <p>16 MR. MCGLYNN: (Indicating.)</p> <p>17 A. Yes.</p> <p>18 Q. One account is called the property account;</p> <p>19 do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And it's basically described as an account</p> <p>22 that Fineberg Management used to manage the Blue</p> <p>23 Hills Office Park. Are you familiar with that</p> <p>24 property account?</p>	<p>46</p>	<p>1 for future claims and liabilities; do you see that?</p> <p>2 A. Where are you looking, please?</p> <p>3 Q. Paragraph Roman IIB.</p> <p>4 MR. MCGLYNN: Take a look at it. And</p> <p>5 then, Bruce, would you please repeat the question or</p> <p>6 have it read back.</p> <p>7 MR. FALBY: Sure.</p> <p>8 Q. Paragraph IIB --</p> <p>9 A. Yes.</p> <p>10 Q. -- refers to paying off third-party</p> <p>11 creditors and then holding the balance as a reserve.</p> <p>12 A. Yes.</p> <p>13 Q. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know if that happened?</p> <p>16 A. Yes. The money is still, as far as I know,</p> <p>17 in a reserve account.</p> <p>18 Q. All \$180,000?</p> <p>19 A. I don't know.</p> <p>20 Q. Page 2 also talks about an initial account,</p> <p>21 and the last page says the initial account contains</p> <p>22 approximately \$1.38 million; do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know where that money came from?</p>	<p>48</p>
<p>1 MR. MCGLYNN: Objection as to form.</p> <p>2 A. That's the regular operating account?</p> <p>3 Q. Yes.</p> <p>4 A. Yes.</p> <p>5 Q. The agreement talks about the property</p> <p>6 manager preparing a final accounting of that</p> <p>7 operating account. Do you know if that happened?</p> <p>8 A. I believe it did.</p> <p>9 Q. Who did it?</p> <p>10 A. I believe Joe Donovan did it.</p> <p>11 Q. Do you know what happened to the money in</p> <p>12 the property account?</p> <p>13 A. No.</p> <p>14 Q. The last page of the agreement -- keep your</p> <p>15 finger on page 2 but look at the very last page.</p> <p>16 The last page says that the property account has</p> <p>17 \$180,000 in it as of January 12, '05. Do you see</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know where that money went?</p> <p>21 A. No, I don't.</p> <p>22 Q. On page 2, Paragraph Roman IIB, as in</p> <p>23 "boy," suggests that it would have been used to pay</p> <p>24 expenses with the balance to be held as a reserve</p>	<p>47</p>	<p>1 A. I believe -- I think it came from the</p> <p>2 refinancing.</p> <p>3 Q. I understand from Mr. Langelier that there</p> <p>4 was an excess of approximately \$5.2 million from the</p> <p>5 Credit Suisse refinancing; is that right?</p> <p>6 A. That's correct.</p> <p>7 Q. And approximately a million of that was put</p> <p>8 in a reserve account?</p> <p>9 A. Yes, this million 3 or -- yes.</p> <p>10 Q. And that million had grown over time to be</p> <p>11 approximately 1.3 by 2004?</p> <p>12 A. Yes.</p> <p>13 Q. And the remaining 4.2 million or</p> <p>14 thereabouts from the Credit Suisse refinancing was</p> <p>15 distributed to you and Mr. Langelier back in 1999,</p> <p>16 was it?</p> <p>17 A. Yes.</p> <p>18 Q. You each got half of that?</p> <p>19 A. Well, there were other partners.</p> <p>20 Q. There were other minority partners with</p> <p>21 small interests?</p> <p>22 A. Yes.</p> <p>23 Q. There were, as this agreement states, the</p> <p>24 Fineberg beneficiaries and the Langelier</p>	<p>49</p>

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<p style="text-align: right;">50</p> <p>1 beneficiaries?</p> <p>2 A. Yes.</p> <p>3 Q. And each of those two groups got half of</p> <p>4 the 4.2 million from the refinancing?</p> <p>5 A. Yes, but I -- yes.</p> <p>6 Q. Is there a "but"?</p> <p>7 A. No. I don't know whether his beneficiary</p> <p>8 got it.</p> <p>9 Q. In any event, you and the others who had</p> <p>10 small interests, which included your children, Gary</p> <p>11 and Michelle, and also Daniel Frank got a small</p> <p>12 piece of that money?</p> <p>13 A. Yes.</p> <p>14 Q. And you got the lion's share as the</p> <p>15 principal?</p> <p>16 A. Yes.</p> <p>17 (The witness and his counsel confer.)</p> <p>18 MR. MCGLYNN: He's having a little</p> <p>19 trouble hearing you, Bruce.</p> <p>20 (Discussion off the record.)</p> <p>21 Q. The second page of Exhibit 176 also refers</p> <p>22 to a supplemental account which the last page says</p> <p>23 as of 12/31/04 contained \$4.2 million; do you see</p> <p>24 that?</p>	<p style="text-align: right;">52</p> <p>1 supplemental account came from distribution of</p> <p>2 profits, did they?</p> <p>3 A. I don't know how you classify it. It just</p> <p>4 came from the account. I know it was in the</p> <p>5 account.</p> <p>6 Q. Was this money that had been generated by</p> <p>7 the property and distributed to the partners?</p> <p>8 A. It might have been, yes.</p> <p>9 Q. Is there any other possible source for it?</p> <p>10 MR. MCGLYNN: Objection.</p> <p>11 A. No.</p> <p>12 Q. Now, page 2 says that the monies in the</p> <p>13 initial account as well as all but 2 million of the</p> <p>14 supplemental account shall be released and paid over</p> <p>15 to the beneficiaries.</p> <p>16 MR. MCGLYNN: Are you asking him to read</p> <p>17 that, Bruce?</p> <p>18 Q. Do you see that in the paragraph titled</p> <p>19 "The Initial Account"?</p> <p>20 A. Yes, I see that.</p> <p>21 Q. Was the \$1.3 million in the initial account</p> <p>22 actually distributed to the beneficiaries?</p> <p>23 A. I don't think so. I don't know. I don't</p> <p>24 believe so.</p>
<p style="text-align: right;">51</p> <p>1 A. Yes.</p> <p>2 Q. Where did that \$4.2 million come from?</p> <p>3 A. That came from some of the -- it came from</p> <p>4 the account itself that we set aside for reserve for</p> <p>5 a rainy day account.</p> <p>6 Q. Where had the money come from that you set</p> <p>7 aside for the rainy day account?</p> <p>8 A. Oh, I'm sorry?</p> <p>9 Q. Where had the money come from that you had</p> <p>10 set aside for the rainy day account?</p> <p>11 A. It came from the operating account, from</p> <p>12 the distributions or profits, and from another</p> <p>13 source, one other source.</p> <p>14 Q. What was the other source?</p> <p>15 A. It was a 2-million-dollar payment.</p> <p>16 Q. That was the 2-million-dollar settlement</p> <p>17 payment made by DST, the affiliate of EquiServe, in</p> <p>18 August 2003 to settle the special permit zoning</p> <p>19 appeal brought by Blue Hills Office Park LLC?</p> <p>20 A. Yes.</p> <p>21 MR. MCGLYNN: Objection.</p> <p>22 Q. The answer was yes?</p> <p>23 A. Yes.</p> <p>24 Q. The remaining monies contained in the</p>	<p style="text-align: right;">53</p> <p>1 Q. Was all but 2 million of the supplemental</p> <p>2 account distributed to the beneficiaries?</p> <p>3 A. No, no.</p> <p>4 Q. Is the 1.38 million in the initial account</p> <p>5 still there?</p> <p>6 A. Yes.</p> <p>7 Q. Is the \$4.2 million in the supplemental</p> <p>8 account still there?</p> <p>9 A. I believe so.</p> <p>10 Q. None of the 1.38 million in the initial</p> <p>11 account or the 4.2 million in the supplemental</p> <p>12 account has been distributed to the beneficiaries of</p> <p>13 the trust?</p> <p>14 A. I don't believe so.</p> <p>15 Q. I pointed out a moment ago the paragraph</p> <p>16 that talks about \$2 million being retained as a</p> <p>17 reserve. You see that, correct?</p> <p>18 A. Yes.</p> <p>19 Q. How was the amount of \$2 million arrived</p> <p>20 at?</p> <p>21 A. I don't know. The attorneys did that.</p> <p>22 Q. Paragraph C and D on page 2 talk about</p> <p>23 distributing monies from the initial account and the</p> <p>24 supplemental account. Do you know why the money was</p>

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<p style="text-align: right;">58</p> <p>1 coincidence that the \$2 million reserve set up by 2 this agreement equals the \$2 million amount of the 3 settlement payment? 4 A. I can't answer that. 5 Q. Do you see on page 4 in Roman Numeral V -- 6 strike that. Do you see on page 4 in the paragraph 7 Roman Numeral V, claims against LLC, that the 8 agreement discusses possible claims for which the 9 beneficiaries may have personal liability? 10 MR. MCGLYNN: Objection as to form. 11 A. I see it, yes. 12 MR. FALBY: Good objection. 13 Q. Do you see the paragraph below that labeled 14 "Mortgage Lender Claim"? 15 A. Yes. 16 Q. In that paragraph the beneficiaries 17 acknowledge that a claim could be asserted by the 18 holder of the first mortgage loan on the property; 19 do you see that? 20 A. Yes, sir, yes. 21 Q. And do you recall that the claim that you 22 had in mind at the time was a claim against you for 23 having taken the 2-million-dollar settlement 24 payment?</p>	<p style="text-align: right;">60</p> <p>1 the time of the zoning appeal settlement in not 2 reporting the settlement or the 2-million-dollar 3 payment to the lender? 4 A. Yes. 5 Q. And did you rely on the advice of counsel 6 at the time of the settlement in not seeking consent 7 to the distribution of the 2-million-dollar payment 8 from Blue Hills Office Park to the beneficiaries? 9 MR. MCGLYNN: Objection. 10 A. Yes, yes. 11 Q. And did you discuss at the time of the 12 settlement with Mr. Frank or Mr. Donovan whether or 13 not you should be informing the lender of the 14 settlement and the 2-million-dollar payment? 15 MR. MCGLYNN: Just I'm going to instruct 16 the witness if -- this just calls for a yes or no. 17 I don't want you to discuss the substance of any 18 discussion with Mr. Frank or Donovan if counsel were 19 present. 20 A. I don't recall. 21 Q. Sorry? 22 A. I don't recall. 23 Q. Do you recall discussions with anyone other 24 than counsel as to whether you ought to be seeking</p>
<p style="text-align: right;">59</p> <p>1 MR. MCGLYNN: Objection, asked and 2 answered. 3 A. I don't know. I don't know if that's -- if 4 that was before or after this agreement. 5 Q. Just to keep in mind, this agreement is a 6 month after the foreclosure. Does that help you? 7 MR. MCGLYNN: Objection. 8 A. No. 9 Q. Then the agreement states that the lack of 10 likelihood of any such claim has been reviewed by -- 11 with counsel; do you see that? 12 MR. MCGLYNN: That just calls for a yes 13 or no, if you can see it. 14 A. I see it, yes. 15 Q. And you had reviewed these matters with 16 counsel, correct? 17 MR. MCGLYNN: Again, that calls for a 18 yes or no. 19 A. I can't -- I really don't remember. 20 Q. Were you relying on advice of counsel with 21 respect to any claim that could be asserted by the 22 lender? 23 A. Yes. 24 Q. Did you rely on the advice of counsel at</p>	<p style="text-align: right;">61</p> <p>1 consent of the lender to the settlement and to the 2 2-million-dollar payment and the conveyance of that 3 payment to Royall Associates Realty Trust? 4 A. I -- after talking with counsel, I didn't 5 believe it was necessary to get the lender's 6 approval. 7 Q. Did you rely on the advice of counsel that 8 you didn't need the consent of the lender to enter 9 into the settlement agreement itself? 10 MR. MCGLYNN: Objection. 11 A. Yes. 12 MR. FALBY: Peter, are you going to -- 13 instruct him not to answer questions about his 14 discussion with counsel on those topics at the time? 15 MR. MCGLYNN: Yes. 16 THE WITNESS: On the what? 17 Q. Are you going to follow Mr. McGlynn's 18 instruction when he instructs you not to tell me 19 about conversations you had with counsel about 20 seeking consent from the lender to the settlement 21 agreement and the payment and the conveyance of it? 22 A. Yes, I am. 23 Q. Let me show you Exhibit 177. These are 24 accounting records produced by your lawyers to us,</p>

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<p>1 into which they were wired? 2 A. As far as I know. 3 Q. And what is the purpose of retaining that 4 money in those accounts? 5 A. Just the same answer I gave before, because 6 of the suit that Lennar brought. 7 Does that have the ticket on it? 8 MR. MCGLYNN: Did we mark these, Bruce? 9 MR. FALBY: I will be happy to. 10 MR. MCGLYNN: It doesn't have a ticket. 11 MR. FALBY: Good point. Let's mark the 12 document we were just looking at, Mr. Fineberg's 13 second supplement to his answers to our first set of 14 interrogatories as Exhibit 323. 15 (Marked, Exhibit 323, Mr. Fineberg's 16 second supplement to his answers to first set of 17 interrogatories.) 18 Q. When will the money in the accounts at 19 Bernkopf and Wilmer Cutler be released? 20 MR. MCGLYNN: Objection, calls for 21 speculation. 22 A. I don't know. 23 Q. Who will it be released to? 24 MR. MCGLYNN: Same objection.</p>	<p>70 1 A. I was told that, and that's why there was 2 such a large reserve account. 3 Q. Who told you that? 4 A. My attorney. 5 Q. Did you learn anything else about the 6 reserve accounts from your attorney? 7 MR. MCGLYNN: Again, I'm going to 8 instruct you not to disclose specific discussions; 9 but if you have an understanding of these reserve 10 accounts based upon those discussions, you can 11 testify. 12 A. I don't know. 13 Q. Do you know anything else about the reserve 14 accounts -- let me ask a better question. At the 15 time of the refinance of the Blue Hills Office Park, 16 did you know anything else about the reserve 17 accounts other than that they were put aside at the 18 onset and monthly to be held and used if EquiServe 19 did not renew its lease? 20 A. Yes, it was to pay for re-leasing the 21 property and to cover any shortfalls in the 22 property. 23 Q. Did you know anything else about the 24 reserve accounts at the time of the refinancing?</p>
<p>71 1 A. I don't know. 2 Q. Who will decide when and to whom it is 3 released? 4 A. The attorneys and the clients too, I think, 5 but mostly the attorneys. 6 Q. And the clients are you and Mr. Langelier? 7 A. Yes. 8 Q. Back to the Credit Suisse refinancing, you 9 told me that you had very little involvement in 10 that, correct? 11 A. Yes. 12 Q. You were aware of the amount of the loan 13 and the interest rate, correct? 14 A. Yes. 15 Q. And the term of the loan, correct? 16 A. Yes. 17 Q. Were you aware of any other terms of the 18 loan? 19 A. I know that there were reserve accounts. 20 Q. And what did you know about that? 21 A. The reserve accounts were put aside at the 22 onset and monthly in a reserve account to be held 23 and used if EquiServe did not renew their lease. 24 Q. How do you know that?</p>	<p>73 1 A. That's all I can recall right now. 2 Q. And your knowledge about the reserve 3 accounts came entirely from your attorneys, did it? 4 A. They explained it to me. 5 Q. You never had any discussions with anybody 6 at Credit Suisse, did you? 7 A. No. 8 Q. And you never actually looked at the loan 9 terms governing the reserves or access to them, did 10 you? 11 A. I might have, but I don't recall it. 12 Q. Sitting here today, do you have any memory 13 of ever reading loan document terms that addressed 14 the reserves or the terms under which Blue Hills 15 Office Park would have access to them? 16 A. When I did the loan? 17 Q. Yes. 18 A. No. 19 Q. Have you subsequently at any point looked 20 at the loan terms governing the reserves or access 21 to them? 22 A. With counsel, yes. 23 Q. When? 24 A. Just recently.</p>

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<p>78</p> <p>1 Q. What you thought back in 1999 was that if</p> <p>2 EquiServe moved out, the borrower would be able to</p> <p>3 get access to the reserves to pay any expense that</p> <p>4 was due in order to tide over the property?</p> <p>5 MR. MCGLYNN: Same objections.</p> <p>6 A. I didn't think of it at that point, in '99.</p> <p>7 Q. You didn't think of what?</p> <p>8 A. Your question.</p> <p>9 Q. *Back in 1999, at the time of the</p> <p>10 refinancing, you didn't consider whether if</p> <p>11 EquiServe moved out, Blue Hills Office Park would</p> <p>12 continue to have to make payments due under the loan</p> <p>13 other than principal and interest?</p> <p>14 A. Repeat that, please.</p> <p>15 *(Question read.)</p> <p>16 A. I didn't consider it either way.</p> <p>17 Q. And you did not discuss that topic with</p> <p>18 your attorneys at the time?</p> <p>19 MR. MCGLYNN: Objection.</p> <p>20 A. At the time I didn't.</p> <p>21 Q. When you refinanced with Credit Suisse, you</p> <p>22 knew that the loan would be securitized, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And that Credit Suisse would assign the</p>	<p>80</p> <p>1 MR. MCGLYNN: Objection.</p> <p>2 A. Yes.</p> <p>3 Q. Did you ever see the mortgage loan</p> <p>4 application for the Credit Suisse refinancing?</p> <p>5 A. I don't recall it right now. I don't</p> <p>6 recall seeing it.</p> <p>7 Q. Typically, as of 2004, did you review</p> <p>8 documents like mortgage loan applications --</p> <p>9 MR. MCGLYNN: Objection.</p> <p>10 Q. -- or did you rely on your counsel?</p> <p>11 MR. MCGLYNN: Objection.</p> <p>12 A. Mostly I relied on my counsel.</p> <p>13 Q. Do you want me to show it to you?</p> <p>14 A. I'd love to see it.</p> <p>15 MR. MCGLYNN: While he's -- can we go</p> <p>16 off the record?</p> <p>17 (Discussion off the record.)</p> <p>18 Q. Let me show you Exhibit 14, which is</p> <p>19 labeled "Mortgage Financing Application." It's</p> <p>20 dated July 20, 1999. Have you ever seen this?</p> <p>21 A. (Witness reviews document.) I don't recall</p> <p>22 seeing it but I must have. Did I sign it?</p> <p>23 Q. No.</p> <p>24 A. Oh.</p>
<p>79</p> <p>1 loan to a loan pool, correct?</p> <p>2 A. Yes.</p> <p>3 Q. That Credit Suisse, after it assigned that</p> <p>4 loan, would no longer be involved with the loan,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And that any understandings with Credit</p> <p>8 Suisse needed to be reflected in the loan documents</p> <p>9 because Credit Suisse would no longer be in the</p> <p>10 picture, correct?</p> <p>11 MR. MCGLYNN: Objection.</p> <p>12 A. I believe so.</p> <p>13 Q. And you knew that after Credit Suisse</p> <p>14 assigned the loan to a loan pool, the loan would be</p> <p>15 serviced by a servicer, correct?</p> <p>16 MR. MCGLYNN: Objection.</p> <p>17 A. Yes.</p> <p>18 Q. Or a special servicer if the loan got in</p> <p>19 trouble, correct?</p> <p>20 MR. MCGLYNN: Objection.</p> <p>21 A. Yes.</p> <p>22 Q. And as you told me before, you knew that</p> <p>23 servicers administer loans according to the loan</p> <p>24 documents, correct?</p>	<p>81</p> <p>1 Q. No signed copy has actually appeared in</p> <p>2 this case. Have you seen Exhibit 14 before?</p> <p>3 A. I don't recall seeing it, but I might have.</p> <p>4 Q. The financing application consists of both</p> <p>5 a letter and an attached term sheet. Do you recall</p> <p>6 seeing either the letter or the term sheet?</p> <p>7 A. I don't recall.</p> <p>8 Q. Let me show you Exhibit 16, which is a</p> <p>9 letter to Credit Suisse from your lawyers at</p> <p>10 Bernkopf. My question is whether you've ever seen</p> <p>11 this document.</p> <p>12 A. (Witness reviews document.) I don't</p> <p>13 remember reading it, but I do see that I was cc'd.</p> <p>14 Q. As of August 31, 1999, if you were cc'd on</p> <p>15 a letter, did you typically review it?</p> <p>16 A. No, not always. I got it.</p> <p>17 Q. It came into your office, and you may or</p> <p>18 may not have looked at it?</p> <p>19 A. Right.</p> <p>20 Q. Do any of the sections of this letter,</p> <p>21 Exhibit 16, look at all familiar?</p> <p>22 A. They all do and they all don't.</p> <p>23 Q. They all look alike?</p> <p>24 A. Right.</p>

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<p>82</p> <p>1 MR. MCGLYNN: Is this a good time, 2 Bruce, to take about a two-minute break? 3 MR. FALBY: Yes, sure. 4 (Recess.) 5 BY MR. FALBY: 6 Q. What was the name of the lawyer on whom you 7 relied in not informing or seeking consent from the 8 lawyer with respect to the settlement of the zoning 9 appeal, the 2-million-dollar settlement payment, 10 with a conveyance of that payment out of Blue Hills 11 Office Park LLC? 12 MR. MCGLYNN: I'm going to object, 13 Bruce. Do you want to take another stab at that 14 one? 15 MR. FALBY: What did I do wrong? 16 MR. MCGLYNN: I didn't even understand 17 the first of the three or four questions in there. 18 Q. You relied on a lawyer in not informing the 19 lender of the settlement of the zoning appeal, 20 correct? 21 A. Yes. 22 Q. What was the name of that lawyer? 23 A. Ken Goldberg. 24 Q. *You relied on a lawyer in not informing</p>	<p>84</p> <p>1 A. (Witness reviews document.) Yes. 2 Q. Of which you've signed many in your career? 3 A. Yes. 4 Q. And you understand that the point of a UCC 5 financing statement is to give notice to the world 6 of security interests in property? 7 MR. MCGLYNN: Objection. 8 A. Yes, yes. 9 Q. And you signed this security statement in 10 connection with the -- strike that. You signed this 11 UCC financing statement in connection with the 12 Credit Suisse refinancing of Blue Hills Office Park, 13 did you? 14 A. Yes. 15 Q. Attached to the first page of the financing 16 statement is a multi-page description of the 17 property in which Credit Suisse had an interest as a 18 secured party? 19 A. Yes. 20 Q. And did you read this description of the 21 property before you signed the financing statement? 22 A. I might have. 23 Q. Did you at least have it explained to you 24 by your attorney if you didn't read it?</p>
<p>83</p> <p>1 the lender of, or seeking consent to, the 2 2-million-dollar settlement of the zoning appeal, 3 correct? 4 A. I don't understand. Just repeat it. 5 *(Question read.) 6 A. Yes. 7 Q. And that was Ken Goldberg too? 8 A. Yes. 9 Q. And you relied on Ken Goldberg as well in 10 not informing the lender of, or seeking consent to, 11 the conveyance of that 2-million-dollar payment out 12 of Blue Hills Office Park LLC? 13 MR. MCGLYNN: Objection as to form. 14 A. Yes. 15 Q. I'm just trying to get the name of the 16 lawyer. It was Ken Goldberg, right? Was it? 17 A. Yes. 18 MR. FALBY: Let me mark as the next 19 exhibit, 324, a document Bates-stamped Blue Hill 20 2757 through 2760. 21 (Marked, Exhibit 324, UCC financing 22 statement, Bates Blue Hill 2757 through 2760.) 23 Q. Do you recognize Exhibit 324 as a UCC 24 financing statement, Mr. Fineberg?</p>	<p>85</p> <p>1 A. I might have. I signed it. 2 Q. Do you think you signed it without looking 3 at it or talking to your attorney about it? 4 MR. MCGLYNN: Objection. 5 A. I might have. I could have. 6 Q. Did you understand that the description of 7 the Blue Hills property that this says the lender 8 has an interest in is very broad? 9 MR. MCGLYNN: Objection. 10 A. Yes. 11 Q. And that it states in Paragraph 1 -- it 12 includes on the fourth line all estates, rights, 13 titles, interests, privileges, liberties having to 14 do with the property? 15 A. Yes. 16 MR. MCGLYNN: Are you asking him to read 17 that and agree that's what it says? 18 A. That's what it says. 19 Q. And in Paragraph 4 do you see that the 20 sixth line up from the bottom of the paragraph 21 numbered 4, that it includes any income, 22 receivables, receipts, revenues, deposits, accounts, 23 cash, issues, profits, et cetera, of Blue Hills 24 Office Park?</p>

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<p>90</p> <p>1 MR. MCGLYNN: Objection.</p> <p>2 A. No.</p> <p>3 Q. Why not?</p> <p>4 A. Because it had nothing to do with the</p> <p>5 building. This was a case where we took -- this was</p> <p>6 an action I took against or we took against DST.</p> <p>7 Q. And you understood that the only reason you</p> <p>8 were entitled to bring that action against DST was</p> <p>9 because you owned the office park that was an</p> <p>10 abutting property to 250 Royall Street, correct?</p> <p>11 MR. MCGLYNN: Objection.</p> <p>12 A. Yes.</p> <p>13 Q. And yet notwithstanding that the only</p> <p>14 reason you could bring the lawsuit was because you</p> <p>15 were an abutter, you thought that had nothing to do</p> <p>16 with the property?</p> <p>17 MR. MCGLYNN: Objection.</p> <p>18 A. Correct.</p> <p>19 Q. Why did you appeal the issuance of the</p> <p>20 special permit to 250 Royall Street to build a</p> <p>21 parking garage?</p> <p>22 A. Originally, when we thought of it, I</p> <p>23 thought maybe if they didn't get the parking, that</p> <p>24 maybe EquiServe might change their mind; but I</p>	<p>92</p> <p>1 A. I don't know. I'd have to check on that.</p> <p>2 Q. Do you recall that there was a lease</p> <p>3 termination agreement as part of the settlement?</p> <p>4 A. I think there was.</p> <p>5 Q. And you understood, didn't you, that the</p> <p>6 settlement which included this lease termination</p> <p>7 agreement eliminated any possibility that EquiServe</p> <p>8 would stay in your building?</p> <p>9 MR. MCGLYNN: Objection.</p> <p>10 A. Yes.</p> <p>11 Q. Why did you keep the 2-million-dollar</p> <p>12 settlement payment in the entity, in Blue Hills</p> <p>13 Office Park LLC, as a reserve against the day that</p> <p>14 you knew was coming a year later when EquiServe was</p> <p>15 going to move out?</p> <p>16 MR. MCGLYNN: Objection.</p> <p>17 A. I sent it to the -- I never saw the money.</p> <p>18 It went directly with the attorneys, and I kept it</p> <p>19 in the special accounts.</p> <p>20 Q. Did you yourself consider that you should</p> <p>21 keep the 2-million-dollar settlement payment in the</p> <p>22 hands of the entity Blue Hills Office Park LLC as a</p> <p>23 reserve against the day you now knew was coming for</p> <p>24 sure a year later when EquiServe would move out and</p>
<p>91</p> <p>1 quickly relinquished that thought and brought it in</p> <p>2 as a nuisance because they went ahead and took our</p> <p>3 tenant, so I wanted to get even.</p> <p>4 Q. Who actually brought the zoning appeal --</p> <p>5 strike that. Who actually brought the special</p> <p>6 permit appeal?</p> <p>7 A. Which attorney?</p> <p>8 Q. No, what entity or person.</p> <p>9 A. Oh, I don't know.</p> <p>10 Q. It was Blue Hills Office Park LLC, right?</p> <p>11 A. Probably.</p> <p>12 Q. Because that was the property owner of the</p> <p>13 abutting property, right?</p> <p>14 A. That's correct.</p> <p>15 Q. And in the appeal, the entity which owned</p> <p>16 the property at 150 Royall Street complained of</p> <p>17 damage to the property that would be caused by</p> <p>18 building a garage at 250 Royall Street, correct?</p> <p>19 A. They did.</p> <p>20 Q. And why did you settle the zoning appeal?</p> <p>21 A. For money.</p> <p>22 Q. And you understood that part of the</p> <p>23 settlement included a lease termination agreement</p> <p>24 that made certain that EquiServe would move out?</p>	<p>93</p> <p>1 there would be no cash flow for the property?</p> <p>2 A. I left that up to my -- to the two</p> <p>3 attorneys, both Goldberg and Cohn.</p> <p>4 MR. MCGLYNN: Cohn.</p> <p>5 THE WITNESS: Cohn.</p> <p>6 Q. Did you have any input into where the</p> <p>7 2-million-dollar settlement payment went?</p> <p>8 A. I don't recall. I've been -- I don't</p> <p>9 recall.</p> <p>10 Q. Did anyone from Fineberg Management that</p> <p>11 you know have any input in deciding who got the</p> <p>12 2-million-dollar settlement payment?</p> <p>13 A. I knew it was sent to Attorney Goldberg and</p> <p>14 Cohn.</p> <p>15 Q. At whose direction?</p> <p>16 A. Most likely mine, but I don't recall.</p> <p>17 Q. The documents produced in the case as well</p> <p>18 as your interrogatory answers indicate that the</p> <p>19 2-million-dollar payment was placed into a client</p> <p>20 account for the benefit of Royall Associates Realty</p> <p>21 Trust. Do you know whether that is the case?</p> <p>22 MR. MCGLYNN: Objection.</p> <p>23 A. No, I don't.</p> <p>24 Q. Assuming that's where the money went, my</p>

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<p>94</p> <p>1 question is why Blue Hills Office Park LLC didn't</p> <p>2 keep the money as a future reserve. And your answer</p> <p>3 is you don't know?</p> <p>4 A. I don't know. I thought I said that.</p> <p>5 Q. Do you recall having any discussions about</p> <p>6 what ought to be done with the 2-million-dollar</p> <p>7 settlement payment at the time it was made?</p> <p>8 A. No. Mr. Goldberg handled it and said he</p> <p>9 was going to put it in a reserve account.</p> <p>10 Q. What reserve account for whose benefit?</p> <p>11 A. I don't know that.</p> <p>12 Q. Did you get the approval of the lender to</p> <p>13 the lease termination agreement that you signed as</p> <p>14 part of the settlement?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know whether the loan documents</p> <p>17 require approval of the lender for the modification</p> <p>18 or termination of a lease of 10 percent or more of</p> <p>19 the space?</p> <p>20 MR. MCGLYNN: Objection.</p> <p>21 A. I think it does, but I don't recall</p> <p>22 specifically how much.</p> <p>23 Q. Given that, why didn't Blue Hills Office</p> <p>24 Park LLC seek the consent of a lender to enter into</p>	<p>96</p> <p>1 A. I never thought of it.</p> <p>2 Q. The settlement of the zoning appeal removed</p> <p>3 any impediment to construction of the garage</p> <p>4 nextdoor, correct?</p> <p>5 MR. MCGLYNN: Objection.</p> <p>6 A. I believe so.</p> <p>7 Q. And it cleared the way for DST to buy the</p> <p>8 property and build a garage?</p> <p>9 A. Yes.</p> <p>10 Q. And for EquiServe to move out of your</p> <p>11 building into Blue View?</p> <p>12 A. Yes.</p> <p>13 Q. Again, as part of the settlement Blue Hills</p> <p>14 and EquiServe signed a lease termination agreement?</p> <p>15 A. Yes.</p> <p>16 Q. And that agreement ensured and confirmed</p> <p>17 that EquiServe would be moving out as of July 31,</p> <p>18 '04?</p> <p>19 A. Yes.</p> <p>20 Q. And the settlement thereby eliminated any</p> <p>21 possibility of EquiServe staying in your building at</p> <p>22 Blue Hills Office Park?</p> <p>23 A. We were notified that they weren't anyhow,</p> <p>24 that they definitely were moving.</p>
<p>95</p> <p>1 the lease termination agreement with EquiServe that</p> <p>2 was part of the zoning appeal lawsuit settlement?</p> <p>3 A. I don't know. That would have been handled</p> <p>4 by my attorney.</p> <p>5 Q. Do you recall discussing that subject with</p> <p>6 your attorney?</p> <p>7 A. No.</p> <p>8 Q. And when you refer to your attorney, again,</p> <p>9 you are talking about Ken Goldberg?</p> <p>10 A. Whenever I refer to my attorney, it's Ken</p> <p>11 Goldberg.</p> <p>12 Q. What should we call that guy sitting next</p> <p>13 to you?</p> <p>14 A. Ken's associate.</p> <p>15 (Laughter.)</p> <p>16 Q. Did you talk to anybody about whether the</p> <p>17 settlement payment ought to be accounted for on the</p> <p>18 books and records of Blue Hills Office Park LLC?</p> <p>19 A. No.</p> <p>20 Q. Do you know whether it was?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you know whether it should have been?</p> <p>23 A. I don't know.</p> <p>24 Q. Did you ever think about that?</p>	<p>97</p> <p>1 Q. And the settlement of the zoning appeal</p> <p>2 that you at least initially had hoped would persuade</p> <p>3 them to stay in the building eliminated any such</p> <p>4 possibility, did it not?</p> <p>5 A. They said they were going to move anyhow.</p> <p>6 Q. And the settlement ensured it; it put the</p> <p>7 nail in the coffin, so to speak?</p> <p>8 MR. MCGLYNN: Objection.</p> <p>9 A. That's a good way of putting it.</p> <p>10 Q. Were you involved in efforts to try to</p> <p>11 re-lease Blue Hills Office Park?</p> <p>12 MR. MCGLYNN: Him personally?</p> <p>13 MR. FALBY: Yes.</p> <p>14 A. When?</p> <p>15 Q. In 2003 after the settlement.</p> <p>16 A. No.</p> <p>17 Q. Did you at some point become involved in</p> <p>18 efforts to re-lease Blue Hills Office Park?</p> <p>19 A. In 2003?</p> <p>20 Q. At any point.</p> <p>21 A. Yes.</p> <p>22 Q. When?</p> <p>23 A. When Bank of Boston, which was the</p> <p>24 predecessor to EquiServe, moved in. They were the</p>

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<p style="text-align: right;">122</p> <p>1 Q. Or about the sale of EquiServe 2 workstations? 3 A. I might have heard of it. I don't recall. 4 Q. You don't recall anybody discussing the 5 sale of the stations or what to do with them? 6 A. Maybe Dan Frank told me. I don't really 7 recall. 8 Q. Let me show you Exhibit 24. This is a 9 letter dated August 5, 2004, from Fineberg 10 Management to Wells Fargo. Did you see that letter 11 at or about the time it went out? 12 A. (Witness reviews document.) I didn't -- I 13 don't remember seeing this letter. 14 Q. Were you shown this letter in preparation 15 for your deposition? 16 A. I don't even remember it in preparation for 17 the deposition. 18 MR. FALBY: Shame on you, Mr. McGlynn. 19 Q. Now, did you know in August 2004 -- well, 20 strike that. Reading the letter now, you see that 21 the first paragraph talks about officially notifying 22 Wells Fargo that the tenant has moved out and that 23 no replacement tenant has been found; do you see 24 that?</p>	<p style="text-align: right;">124</p> <p>1 A. I kept asking Dan Frank when he's going to 2 sit down and meet with the special servicer, and I 3 told him that if he met with the special servicer, 4 I'd like to be there. 5 Q. And when were you asking Dan Frank to do 6 that? 7 A. I can't remember the date, but during the 8 course of the summer when we first notified them; 9 and after that I kept telling him to set up an 10 appointment with a special servicer. 11 Q. And what did Mr. Frank say in response to 12 your repeated requests? 13 A. He said he's been trying to get in touch 14 with them but hasn't been able to get an answer to 15 the meeting and hasn't heard anything from them. 16 Q. When did he tell you that? 17 A. Oh, I don't know, during the course of the 18 summer, all the while he notified them and -- right 19 through. He said he has never -- he hasn't got a 20 call back from them to have a meeting. I don't 21 think even to this day he's had a meeting. 22 Q. Do you know whether in response to the 23 August 5 letter there was any further communication 24 between Fineberg Management and Wells Fargo?</p>
<p style="text-align: right;">123</p> <p>1 A. Yes. 2 Q. And it requests a meeting with the lender 3 to discuss the loan status and the future 4 performance of the loan; do you see that? 5 A. Yes. 6 Q. In the second paragraph it talks about 7 involving a special servicer based on our past 8 experience, correct? 9 A. Yes. 10 Q. At that point, August 2004, you and others 11 at Fineberg Management did have past experience in 12 dealing with special servicers with respect to loans 13 that were in trouble, correct? 14 A. Yes. 15 Q. And those were all the hotels you told me 16 about that were eventually either given back or 17 foreclosed on, right? 18 A. Yes. 19 Q. Now, in August 2004 were you having 20 discussions with Dan Frank or Joe Donovan about 21 notifying Wells Fargo and requesting a meeting and 22 so forth? 23 A. Yes. 24 Q. What do you recall about that?</p>	<p style="text-align: right;">125</p> <p>1 MR. MCGLYNN: Objection. Can you repeat 2 that, please, Bruce. 3 Q. Sure. Do you know, Mr. Fineberg, whether 4 after the August 5 letter went out, there was any 5 further communication between Fineberg Management 6 and Wells Fargo? 7 A. I do not know that. 8 Q. Do you know whether Joe Donovan was trying 9 to reach Wells Fargo on the phone? 10 A. I think he was. 11 Q. Do you know whether Wells Fargo was trying 12 to reach Joe Donovan on the phone? 13 A. I do not know that. 14 Q. Did you see Exhibit 56 -- strike that. Did 15 you see Exhibit 27 at the time? 16 A. (Witness reviews document.) I don't 17 remember reading it at the time. I remember reading 18 it in preparation. 19 Q. Did you know at the time that -- as of 20 August 2004, that Mr. Mallegni of Wells Fargo and 21 Mr. Donovan were trading calls and missing each 22 other? 23 A. No. 24 Q. Do you know whether they ever actually</p>

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<p style="text-align: right;">126</p> <p>1 spoke?</p> <p>2 A. I don't know.</p> <p>3 Q. If they did, do you know what they talked</p> <p>4 about?</p> <p>5 A. No, I don't.</p> <p>6 MR. MCGLYNN: Is this a good time to</p> <p>7 break, Bruce, or -- I mean, if you have any</p> <p>8 follow-up questions to Exhibit 22 --</p> <p>9 THE WITNESS: We can go a few more</p> <p>10 minutes.</p> <p>11 MR. MCGLYNN: That's why I asked, but he</p> <p>12 had agreed to break at 12:30.</p> <p>13 MR. FALBY: Whenever you want. This is</p> <p>14 a fine time for me. I don't care.</p> <p>15 MR. MCGLYNN: Okay.</p> <p>16 (Discussion off the record.)</p> <p>17 (Luncheon recess at 12:35 p.m.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">128</p> <p>1 pool into which the Credit Suisse refinancing was</p> <p>2 assigned?</p> <p>3 A. Not that I know of.</p> <p>4 Q. Do you know if there were any agreements</p> <p>5 among the trustee, special servicer, or servicer?</p> <p>6 A. I don't know.</p> <p>7 Q. So obviously, if there were any such</p> <p>8 agreements, you don't know what they said?</p> <p>9 A. Right.</p> <p>10 Q. Who made the decision to appeal the special</p> <p>11 permit that was granted to build the parking garage</p> <p>12 nextdoor?</p> <p>13 A. I think it was a joint decision.</p> <p>14 Q. Among whom?</p> <p>15 A. Among Dan Frank, myself, Langelier, and</p> <p>16 Goldberg, and Cohn.</p> <p>17 Q. Blue Hills Office Park LLC as an entity was</p> <p>18 formed in connection with the Credit Suisse</p> <p>19 refinancing, correct?</p> <p>20 A. Correct.</p> <p>21 Q. It didn't exist before then, right?</p> <p>22 A. Correct.</p> <p>23 Q. Before that Royall Associates Realty Trust</p> <p>24 owned the office park, correct?</p>
<p style="text-align: right;">127</p> <p>1 AFTERNOON SESSION (1:22 p.m.)</p> <p>2 BY MR. FALBY:</p> <p>3 Q. Mr. Fineberg, at the time of the Credit</p> <p>4 Suisse refinancing in 1999, did you know to which</p> <p>5 particular loan pool that loan was going to be</p> <p>6 assigned?</p> <p>7 A. No.</p> <p>8 Q. Did you know who the trustee of that loan</p> <p>9 pool was going to be?</p> <p>10 A. No.</p> <p>11 Q. Did you know who the servicer of that loan</p> <p>12 pool was going to be?</p> <p>13 A. No.</p> <p>14 Q. Did you ever see any agreements among any</p> <p>15 of the trustee or the special servicer or the</p> <p>16 servicer?</p> <p>17 A. No.</p> <p>18 Q. When I asked that question, I was</p> <p>19 referring, of course, to the Blue Hills loan. Did</p> <p>20 you understand that?</p> <p>21 A. Yes.</p> <p>22 Q. Did anybody at Fineberg Management ever see</p> <p>23 any agreement or agreements among any of the trustee</p> <p>24 or the servicer or the special servicer for the loan</p>	<p style="text-align: right;">129</p> <p>1 A. That's right.</p> <p>2 Q. After the Credit Suisse refinancing, who</p> <p>3 made decisions in the ordinary course for the entity</p> <p>4 Blue Hills Office Park LLC?</p> <p>5 MR. MCGLYNN: Objection.</p> <p>6 A. Who made decisions?</p> <p>7 Q. Yes.</p> <p>8 A. Langelier and Fineberg.</p> <p>9 Q. You have referred today to referring Dan</p> <p>10 Frank to talk to Ken Goldberg about things in August</p> <p>11 of 2004; do you remember that?</p> <p>12 A. Yes.</p> <p>13 Q. Who at that point was making decisions as</p> <p>14 to what actions would be taken by Blue Hills Office</p> <p>15 Park LLC?</p> <p>16 A. Well, I think the attorneys talked to their</p> <p>17 clients and we -- and gave us advice on what to do.</p> <p>18 Q. And then the clients, meaning you and</p> <p>19 Langelier as principals, would make the ultimate</p> <p>20 decision?</p> <p>21 A. I think so.</p> <p>22 Q. And was the same thing -- strike that.</p> <p>23 With respect to the -- appealing the zoning appeal</p> <p>24 and settling it and the handling of the settlement</p>

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<p style="text-align: right;">130</p> <p>1 payment, those decisions were made by whom?</p> <p>2 A. Jointly.</p> <p>3 Q. By you and Mr. Langelier jointly?</p> <p>4 A. With the attorneys' consent (nodding).</p> <p>5 Q. I assume you made decisions with your</p> <p>6 attorney's input and recommendation, but the</p> <p>7 ultimate decisions were made by you and</p> <p>8 Mr. Langelier with respect to Blue Hills Office Park</p> <p>9 LLC?</p> <p>10 A. I think you could be correct.</p> <p>11 Q. Am I correct?</p> <p>12 A. I think so.</p> <p>13 MR. MCGLYNN: Asked and answered.</p> <p>14 Objection.</p> <p>15 A. I think so.</p> <p>16 Q. All right. Not only could I be, I am.</p> <p>17 MR. MCGLYNN: That's objectionable too.</p> <p>18 (Laughter.)</p> <p>19 Q. Let me show you Exhibit 20, which is the</p> <p>20 zoning appeal complaint filed by Blue Hills Office</p> <p>21 Park LLC. Did you see this at or around the time it</p> <p>22 was filed?</p> <p>23 A. (Witness reviews document.) I don't</p> <p>24 remember. I might have seen it, but I don't</p>	<p style="text-align: right;">132</p> <p>1 this complaint was filed, did you believe the</p> <p>2 statement in Paragraph 37 to be true?</p> <p>3 A. I didn't know. I thought it was true, but</p> <p>4 after that --</p> <p>5 Q. Subsequently, did you come to some</p> <p>6 different view of the sentence in Paragraph 37?</p> <p>7 A. Yes.</p> <p>8 Q. What view did you come to?</p> <p>9 A. I had a meeting with -- that I attended</p> <p>10 with some people from National Development, and they</p> <p>11 came in with a book with charts and models and</p> <p>12 pictures, and after discussion they showed where</p> <p>13 they had altered it so that the line of sight from</p> <p>14 150 was not obstructed but was enhanced because they</p> <p>15 took down the trees that were in front and they</p> <p>16 lowered the two wells that they had for stairwells</p> <p>17 above it and lowered the wall so that when you</p> <p>18 looked out, you couldn't see it, and they went</p> <p>19 through an extensive explanation of it.</p> <p>20 Q. So is it the case that in response to your</p> <p>21 complaint, they made alterations to the garage to</p> <p>22 meet the objections stated in Paragraph 37?</p> <p>23 MR. MCGLYNN: Objection.</p> <p>24 A. Yes.</p>
<p style="text-align: right;">131</p> <p>1 remember it.</p> <p>2 Q. Did you discuss the content of the zoning</p> <p>3 appeal complaint with your attorney at the time?</p> <p>4 A. Yes.</p> <p>5 Q. Can you please turn to page 8 of the zoning</p> <p>6 appeal complaint.</p> <p>7 A. Yes.</p> <p>8 Q. Paragraph 37 is one sentence long; do you</p> <p>9 see that?</p> <p>10 A. Yes.</p> <p>11 Q. It says, quote, "The proposed parking</p> <p>12 structure is immediately in the sight line of the</p> <p>13 plaintiff's property, will partially block its view,</p> <p>14 and it will be detrimental and offensive to</p> <p>15 plaintiff and the inhabitants of plaintiff's</p> <p>16 property," unquote. Did I read that correctly?</p> <p>17 A. Yes.</p> <p>18 Q. Keeping in mind that the plaintiff was Blue</p> <p>19 Hills Office Park LLC, is this statement true, or</p> <p>20 was it true at the time?</p> <p>21 A. I thought it was true at the time, but it</p> <p>22 proved to be not true.</p> <p>23 Q. At the time you filed this complaint, did</p> <p>24 you believe this statement was true? At the time</p>	<p style="text-align: right;">133</p> <p>1 Q. Now, at the time you filed the zoning</p> <p>2 complaint, was it true, as stated in Paragraph 38,</p> <p>3 in your view that the addition of 380 spaces in a</p> <p>4 structured parking facility directly in the sight</p> <p>5 line of plaintiff's property posed a detriment to</p> <p>6 plaintiff's property?</p> <p>7 A. Well, I thought it would before I looked at</p> <p>8 their plans. After I saw their plans and saw the</p> <p>9 finished product, it's in a downhill, and you really</p> <p>10 don't see it when you look out because the hill</p> <p>11 comes down and the garage is there, so it really</p> <p>12 didn't obstruct it after they made some changes.</p> <p>13 Q. Focusing at -- strike that. Focusing on</p> <p>14 the date on which the complaint was filed, which was</p> <p>15 June 9, 2003, before any such changes, as of June 9,</p> <p>16 2003, when Blue Hills Office Park LLC filed a</p> <p>17 complaint, did you believe that the statement in</p> <p>18 Paragraph 38, that the addition of the parking</p> <p>19 facility would be a detriment to plaintiff's</p> <p>20 property, was true?</p> <p>21 A. June 9 what?</p> <p>22 Q. 2003.</p> <p>23 A. I can't remember exactly the dates, but I</p> <p>24 thought, when I heard about it, just heard about it,</p>

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<p>142</p> <p>1 A. I don't know that.</p> <p>2 Q. Well, didn't you reserve in the agreement</p> <p>3 we started off with this morning a lawsuit against</p> <p>4 them for not making all the alterations they</p> <p>5 promised they would make?</p> <p>6 A. I don't know about that.</p> <p>7 Q. Let me show you. I refer you again to</p> <p>8 Exhibit 176. You acknowledged that you have a claim</p> <p>9 against the owner of the newly constructed office</p> <p>10 building at 250 Royall street for failure to</p> <p>11 construct those premises within the height and</p> <p>12 building envelope restrictions agreed upon with the</p> <p>13 LLC, and the agreement defined that as claim against</p> <p>14 abutter.</p> <p>15 A. (Witness reviews document.) I don't know</p> <p>16 about it.</p> <p>17 Q. Does that refresh your memory that in fact</p> <p>18 the garage was not built in accordance with the</p> <p>19 alterations you had been promised?</p> <p>20 A. I thought it was.</p> <p>21 Q. And yet you nonetheless signed an agreement</p> <p>22 in which you acknowledged that it wasn't?</p> <p>23 A. I can't recall why I signed it.</p> <p>24 Q. To this day do you know whether the garage</p>	<p>144</p> <p>1 Q. What else did he tell you on that subject?</p> <p>2 A. That's all I can say.</p> <p>3 MR. MCGLYNN: I'm going to instruct you</p> <p>4 not to discuss any substantive discussions with your</p> <p>5 attorneys.</p> <p>6 MR. FALBY: Well, he just did, so I will</p> <p>7 ask the question.</p> <p>8 MR. MCGLYNN: Well, it came out so fast</p> <p>9 that -- obviously, we don't have split-second</p> <p>10 reaction time here.</p> <p>11 Q. What else did Mr. Goldberg tell you on the</p> <p>12 subject of whether you ought to be informing your</p> <p>13 lender and seeking their consent to the settlement</p> <p>14 and the disposition of the payment?</p> <p>15 A. That's all he told me.</p> <p>16 MR. MCGLYNN: Objection. I'm</p> <p>17 instructing the witness not to answer.</p> <p>18 Q. Were you interested in avoiding telling</p> <p>19 your lender about the \$2 million for fear they would</p> <p>20 want some part of it?</p> <p>21 MR. MCGLYNN: Objection.</p> <p>22 A. No. I didn't think of that. I didn't</p> <p>23 think of that.</p> <p>24 Q. It didn't occur to you before you disposed</p>
<p>143</p> <p>1 was built within the height and building envelope</p> <p>2 restrictions agreed upon with the building nextdoor?</p> <p>3 A. I don't know. I know that till today it</p> <p>4 doesn't block any sight line.</p> <p>5 Q. It's your testimony that today, as built,</p> <p>6 the parking garage has no impact whatsoever either</p> <p>7 on the view from the building or on the view of the</p> <p>8 building from the highway?</p> <p>9 A. Right.</p> <p>10 Q. At the time you settled the zoning appeal</p> <p>11 for \$2 million, did you have any discussion with</p> <p>12 anyone other than your attorney, Ken Goldberg, about</p> <p>13 whether the lender ought to be informed and its</p> <p>14 consent obtained to keep that \$2 million?</p> <p>15 A. No, I talked only with Ken Goldberg.</p> <p>16 Q. Similarly, did you discuss with anybody</p> <p>17 else whether the fact of the settlement and how much</p> <p>18 you were settling for, whether that should be</p> <p>19 discussed with the lender and their consent</p> <p>20 obtained?</p> <p>21 A. I was told we had a right to keep the money</p> <p>22 and we had a right to deposit it wherever we wanted.</p> <p>23 Q. Mr. Goldberg told you that, did he?</p> <p>24 A. Yes, sir.</p>	<p>145</p> <p>1 of \$2 million of Blue Hills Office Park LLC assets</p> <p>2 that the lender might have some interest in the</p> <p>3 disposition of that \$2 million?</p> <p>4 MR. MCGLYNN: Asked and answered,</p> <p>5 objection.</p> <p>6 A. I was told I had the right to keep the</p> <p>7 money, to not to tell them.</p> <p>8 Q. Mr. Goldberg told you that?</p> <p>9 MR. MCGLYNN: Objection.</p> <p>10 A. That's right.</p> <p>11 Q. And you relied on him, did you?</p> <p>12 A. I always rely on him.</p> <p>13 Q. Did you have any independent thought</p> <p>14 yourself that maybe the lender would want to know</p> <p>15 about \$2 million that belonged to its single-purpose</p> <p>16 borrower in all of whose assets it had a security</p> <p>17 interest?</p> <p>18 A. No.</p> <p>19 MR. MCGLYNN: Objection, form, calls for</p> <p>20 speculation.</p> <p>21 A. No.</p> <p>22 Q. It didn't occur to you?</p> <p>23 A. No.</p> <p>24 Q. And did you have any discussion on that</p>

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<p style="text-align: right;">Page 158</p> <p>1 going. We wanted a global conference, not a 2 piecemeal conference. 3 Q. Same answer for why you didn't pay the 4 escrow payments that Lennar said were in default as 5 of September 17, 2004? 6 A. Yes. 7 Q. Do you know if in response to the September 8 17, 2004 letter anybody from Blue Hills responded to 9 Lennar? 10 A. I don't know for a fact, no. I didn't. 11 Q. After -- 12 A. I think Goldberg did, though. I don't 13 know. 14 Q. You don't know, right? 15 A. I don't know, but I still think Goldberg 16 did. 17 Q. Okay. After Blue Hills received the 18 September 17, 2004 letter, did you offer to cure the 19 defaults that are listed here by paying the taxes 20 and the escrow payment? 21 A. After that letter, everything went through 22 Goldberg. We still requested a sit-down with 23 someone from Lennar to go over the whole situation, 24 but everything then went right through Ken Goldberg.</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. So why didn't you, as the client, in 2 consultation with Mr. Langelier, offer to cure the 3 default? 4 A. Because we wanted to sit down and have a 5 meeting to go over it with Lennar, and we were 6 waiting. 7 Q. But at the point you understood there 8 wasn't going to be a meeting, why didn't you, as the 9 owner, the guy in charge, offer to cure the default 10 or do something? 11 A. I didn't think there was not going to be a 12 meeting. In my experience with Lennar, there always 13 was a meeting. 14 Q. At some point prior to November 18, 2004, 15 when Lennar conducted the foreclosure sale, you 16 realized there wasn't going to be a meeting, didn't 17 you? 18 A. Yes. 19 Q. And when you made that realization, why 20 didn't you offer to cure the default or do something 21 else to work out the loan? 22 A. The only way you can work it out is to sit 23 down and talk about it. 24 Q. Did you think that Lennar was obligated</p>
<p style="text-align: right;">Page 159</p> <p>1 Q. Who after September 17, 2004, requested the 2 sit-down? 3 A. I don't know. 4 Q. I understand you referred it to Ken 5 Goldberg, but why, when you learned that a default 6 had been declared with respect to the amounts of 7 158,000 in taxes and 80,000 in escrow payments, 8 didn't you offer to cure the default? 9 A. We were still waiting for a sit-down 10 meeting to discuss everything. 11 Q. At some point you realized that sit-down 12 meeting wasn't going to occur, correct? 13 A. I was still waiting. 14 Q. At some point you realized it wasn't going 15 to happen, correct? 16 A. Yes. 17 Q. At that point did you consider offering to 18 cure the default? 19 A. At that point it was turned over to 20 Goldberg and Andrew Cohn. 21 Q. But you are the client. You ultimately 22 make the decisions on Blue Hills with Mr. Langelier, 23 right? 24 A. Yes.</p>	<p style="text-align: right;">Page 161</p> <p>1 under the loan documents to meet with you? 2 A. They were obligated morally and ethically 3 to sit down and talk to a borrower, yes. 4 Q. I understand your feeling that they were 5 ethically and morally obligated to do that. Do you 6 know independently yourself whether the loan 7 documents -- whether the loan documents obligated 8 Lennar to sit down with you? 9 A. I think that's an attorney's decision to 10 make. I think that's an attorney's -- 11 Q. You don't know? 12 A. I'd leave that up to an attorney. 13 Q. Well, you do know that even if you had a 14 meeting, Lennar wasn't obligated to agree to 15 anything you proposed, correct? 16 A. They weren't obligated, but they were 17 obligated to meet with us. 18 Q. Let's assume you had a meeting and they 19 refused to do anything that you wanted. What would 20 you have done then? 21 A. Oh, you're putting something in that I 22 can't tell you. It depends what happens at the 23 meeting. 24 Q. Well, let's say at the meeting they said,</p>

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<p style="text-align: right;">162</p> <p>1 "Forget it. We're not going to agree to anything. 2 Either bring the loan current or we're foreclosing." 3 A. I can't answer that the way you put it. 4 We're talking two years later. 5 Q. What did Blue Hills do in response to the 6 September 17, 2004 default notice that I've showed 7 you, which is Exhibit 30? 8 A. We turned it over to the attorneys to talk 9 to their attorneys, I guess. 10 Q. Let me show you Exhibit 175, which is a 11 November 3, 2004 e-mail from Bill Langelier to Dan 12 Frank. Have you ever seen this before? 13 A. (Witness reviews document.) No, not that I 14 remember. 15 Q. Did Mr. Frank ever tell you that Bill 16 Langelier had sent an e-mail on the subject of 17 trying to buy the debt at a discount? 18 A. I think he did say something to that effect 19 once, but I can't remember it. 20 Q. Take a moment and read this, if you would, 21 please. 22 A. (Witness reviews document.) This is a good 23 letter from Bill to Dan, but I didn't put much hope 24 or faith in his letter.</p>	<p style="text-align: right;">164</p> <p>1 would be under the mistaken impression from Andy 2 Cohn that you had? 3 A. I don't know, not from me. We hadn't sat 4 down with Lennar. How can I make a statement like 5 that? Who would I make it to? 6 Q. As of November 3, were you interested in 7 buying the debt at a discount? 8 A. I don't recall ever making that statement 9 or hearing about it. 10 Q. Well, at the time, in your thoughts, were 11 you interested in trying to buy the debt at a 12 discount? 13 A. No. 14 Q. If you had had the opportunity to buy the 15 debt at a discount, would you have done so? 16 A. I don't know. 17 Q. Did you ever make a written proposal to 18 Lennar to buy the debt at a discount? 19 A. Not that I know of. 20 Q. Why not? 21 A. I want to sit down with them, I want to 22 talk with them. I don't just throw offers around on 23 anything. I didn't even know if it was for sale. 24 Q. Well, since you weren't getting</p>
<p style="text-align: right;">163</p> <p>1 Q. Were you aware of this e-mail at the time? 2 A. I might have been. I can't recall right 3 now. 4 Q. In the fourth line Mr. Langelier says, "I 5 would hope that you and Jerry would want to defer 6 the foreclosure until the next tag shoe"; do you see 7 that? 8 A. Yes. 9 Q. Did you want to defer the foreclosure? 10 A. No. 11 Q. Why not? 12 A. It didn't matter to me, one year or the 13 next. 14 Q. Did you request that Lennar defer the 15 foreclosure? 16 A. No. 17 Q. The next line says, "I'm aware through Andy 18 Cohn that Jerry has looked into trying to buy the 19 debt at a discount." Did you look into trying to 20 buy the debt at a discount? 21 A. No. 22 Q. Why not? 23 A. I just didn't. 24 Q. Do you have any idea why Mr. Langelier</p>	<p style="text-align: right;">165</p> <p>1 satisfaction on what you say was your request for a 2 meeting -- 3 A. Uh-huh. 4 Q. -- did it occur to you simply to make a 5 proposal in writing to Lennar? 6 A. It didn't. 7 Q. Did it occur to you maybe that would be a 8 good idea? 9 A. I can't go back in my memory two years and 10 think what I should have done, could have done. 11 Q. No, I'm asking you what you remember. Do 12 you remember? 13 A. I don't remember. 14 Q. I mean, the obvious question is, you were 15 interested in having a meeting, and a meeting wasn't 16 happening. And you were interested nonetheless in 17 working out the loan. Why didn't you make a 18 proposal in writing? 19 A. Because if I made a proposal -- if they 20 wouldn't sit down with me and talk with me, there 21 wasn't going to be a written proposal. So you could 22 have another piece of evidence here to put a stamp 23 on? They wouldn't sit down. That's the first thing 24 you do. Then you make your proposal. You don't</p>

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<p style="text-align: right;">166</p> <p>1 just throw letters around.</p> <p>2 Q. Mr. Langelier then discusses the</p> <p>3 possibility of him jointly acquiring the debt with</p> <p>4 you; do you see that?</p> <p>5 A. Yup.</p> <p>6 Q. Were you interested in that possibility?</p> <p>7 A. That's his statement, not mine.</p> <p>8 Q. Did you discuss with Mr. Langelier through</p> <p>9 Mr. Frank or anyone else buying the debt with</p> <p>10 Mr. Langelier?</p> <p>11 A. No.</p> <p>12 Q. Why not?</p> <p>13 A. Same reason that I had for not doing it</p> <p>14 myself. I wanted to sit down and have a meeting and</p> <p>15 discuss it. I'm not going to give offers.</p> <p>16 Q. Well, before you went to a meeting with</p> <p>17 Lennar, wouldn't you at least be talking to your</p> <p>18 equal partner to figure out what it is you would</p> <p>19 want to offer at a meeting?</p> <p>20 A. Well, I would think that Mr. Goldberg and</p> <p>21 Mr. Cohn would talk to Langelier and Mr. Goldberg</p> <p>22 would come back to me.</p> <p>23 Q. Well, did you, in November, through</p> <p>24 Mr. Frank or through Mr. Goldberg or anybody,</p>	<p style="text-align: right;">168</p> <p>1 Q. Were you interested in that idea?</p> <p>2 A. No.</p> <p>3 Q. Did you instruct Mr. Goldberg to pursue it</p> <p>4 further with Mr. Langelier's attorney?</p> <p>5 A. Yes.</p> <p>6 Q. And did he?</p> <p>7 A. I don't know.</p> <p>8 Q. Did he come back to you with some further</p> <p>9 discussion on that subject?</p> <p>10 A. I don't remember.</p> <p>11 Q. He then continues in this e-mail, "I think</p> <p>12 this," referring to jointly buying the debt with</p> <p>13 you, "is a workable option that should be considered</p> <p>14 by the partners that not only has profit potential</p> <p>15 but will also defer the tax liability." Do you see</p> <p>16 that?</p> <p>17 A. Yes.</p> <p>18 Q. Did you agree with that analysis at the</p> <p>19 time?</p> <p>20 A. I didn't even think about that analysis at</p> <p>21 the time.</p> <p>22 Q. Why not?</p> <p>23 A. Because I turned the letter -- I didn't</p> <p>24 read the letter. I left it up to Dan Frank and Ken</p>
<p style="text-align: right;">167</p> <p>1 respond to this expression of interest that</p> <p>2 Mr. Langelier had in possibly jointly acquiring the</p> <p>3 debt with you?</p> <p>4 A. Mr. Goldberg might have talked to Mr. Cohn</p> <p>5 but I didn't.</p> <p>6 Q. Do you recall talking to anybody about what</p> <p>7 response should be made to this interest of</p> <p>8 Mr. Langelier in jointly acquiring the debt with</p> <p>9 you?</p> <p>10 A. I left it up to Goldberg.</p> <p>11 Q. Did you discuss it with Mr. Goldberg?</p> <p>12 A. I might have.</p> <p>13 Q. You don't remember?</p> <p>14 A. I might have. I think I did.</p> <p>15 Q. And what did you conclude? Were you</p> <p>16 interested in jointly acquiring the debt with</p> <p>17 Mr. Langelier?</p> <p>18 A. I left it up to Goldberg to talk to</p> <p>19 Mr. Cohn.</p> <p>20 Q. I understand that, but did you, as the</p> <p>21 client, the guy in charge, make any decision as to</p> <p>22 whether you were interested in jointly acquiring the</p> <p>23 debt with Mr. Langelier?</p> <p>24 A. No, I didn't make a decision.</p>	<p style="text-align: right;">169</p> <p>1 Goldberg, Andrew Cohn, and I stepped aside.</p> <p>2 Q. I'm just curious why you stepped aside</p> <p>3 since it was your asset and you were the principal.</p> <p>4 A. Because I wanted them to read the letter</p> <p>5 and make a decision. I don't understand -- I don't</p> <p>6 know why, but if they wouldn't sit down with you and</p> <p>7 just talk to you and have a meeting or give you any</p> <p>8 indication, then how are you going to give them an</p> <p>9 offer?</p> <p>10 Q. In writing.</p> <p>11 A. Or any kind of offer.</p> <p>12 Q. I'm suggesting if they won't sit down with</p> <p>13 you and talk to you, you can make an offer in</p> <p>14 writing.</p> <p>15 A. I don't do that.</p> <p>16 Q. Why not?</p> <p>17 A. I just don't. That's not my way. It's not</p> <p>18 my style.</p> <p>19 Q. In the third line up from the bottom,</p> <p>20 Mr. Langelier says, "If, however, Jerry has decided</p> <p>21 not to pursue the acquisition of the debt, please</p> <p>22 let me know ASAP." As of November 3, 2004, had you</p> <p>23 decided not to pursue the acquisition of the debt?</p> <p>24 A. I don't even remember answering this</p>

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<p style="text-align: right;">170</p> <p>1 letter. I don't recall it at all.</p> <p>2 Q. Putting aside the letter, just think back</p> <p>3 to early November '04, two weeks before the</p> <p>4 foreclosure. At that point had you decided not to</p> <p>5 pursue the acquisition of the debt?</p> <p>6 A. I made the same statement each time, that</p> <p>7 if they wouldn't sit down and talk with me, how can</p> <p>8 they make any deal with anyone? If they can't look</p> <p>9 you in the eyes, you can't make a deal.</p> <p>10 Q. And you weren't interested in making any</p> <p>11 sort of proposal in writing or on the telephone or</p> <p>12 any other way short of a meeting?</p> <p>13 A. That's correct.</p> <p>14 Q. Did you want to work with the lender to</p> <p>15 restructure the loan?</p> <p>16 A. I wanted to retain ownership of the</p> <p>17 building, and I would have done anything to do that.</p> <p>18 Q. You obviously didn't do everything, because</p> <p>19 you didn't make any offer to do so.</p> <p>20 MR. MCGLYNN: Objection.</p> <p>21 A. I don't generally make offers when people</p> <p>22 don't want to talk to me. We had 6 million, 5</p> <p>23 million plus dollars sitting there waiting. We had</p> <p>24 the -- they knew we were asking for a meeting, and I</p>	<p style="text-align: right;">172</p> <p>1 A. Well, I also signed a letter that they sent</p> <p>2 me. What do you call that letter?</p> <p>3 Q. Prenegotiation letter.</p> <p>4 A. If I didn't want to sit down with them, I</p> <p>5 never would have signed a renegotiation letter.</p> <p>6 Generally, in my experience, when I sign a</p> <p>7 renegotiation letter, that means I want to sit down</p> <p>8 with them and talk to them. And it said right in</p> <p>9 that letter that "before we can sit down and talk to</p> <p>10 you, you must sign this letter," so I signed it and</p> <p>11 assumed that they were going to call me and talk to</p> <p>12 me.</p> <p>13 Q. Do you recall that you also agreed in that</p> <p>14 letter -- do you also recall that you agreed in that</p> <p>15 renegotiation letter that you would send them a</p> <p>16 business plan for the property?</p> <p>17 A. There's no business plan to renting a</p> <p>18 building. You rent a building. You have a tenant.</p> <p>19 That's your business plan. But we did submit --</p> <p>20 they had all the facts on just about everything we</p> <p>21 did. We had sent them all the facts except the</p> <p>22 business plan because it's a normal thing, a</p> <p>23 business plan is: You rent out the building and the</p> <p>24 rents pay for the expenses.</p>
<p style="text-align: right;">171</p> <p>1 don't know what more you should do.</p> <p>2 Q. Did you or anyone else ever tell Lennar</p> <p>3 that you had 5 million plus dollars sitting there?</p> <p>4 A. How could I -- I didn't tell them because</p> <p>5 they never talked to me.</p> <p>6 Q. Did anybody from your side ever tell Lennar</p> <p>7 that you had 5 million plus dollars available to</p> <p>8 devote to the property if they'd just sit down and</p> <p>9 talk about it?</p> <p>10 A. If they had called a meeting and sat down,</p> <p>11 they sure as heck would have known because I would</p> <p>12 have told them.</p> <p>13 Q. But you weren't going to tell them unless</p> <p>14 they agreed to a meeting?</p> <p>15 A. How can you talk to -- make a business deal</p> <p>16 of this magnitude without somebody sitting down and</p> <p>17 being willing to -- if they're not willing to talk</p> <p>18 to me, how can they be willing to do business with</p> <p>19 me?</p> <p>20 Q. I suppose you could make a proposal or at</p> <p>21 least tell Lennar you were interested in keeping it</p> <p>22 and actually had \$5 million to devote to that</p> <p>23 purpose if you felt like it, if they'd only sit down</p> <p>24 with you. But you didn't do that?</p>	<p style="text-align: right;">173</p> <p>1 Q. Well, did you have a plan for the building</p> <p>2 that would tide it over until you could get a tenant</p> <p>3 in there?</p> <p>4 A. Our \$6 million plus. I had some extra</p> <p>5 money and Langeller had more money. We really</p> <p>6 wanted this building.</p> <p>7 Q. So did you therefore put that in writing in</p> <p>8 the form of a business plan and send it to Lennar as</p> <p>9 you had agreed to do in the renegotiation letter?</p> <p>10 A. No, that's not a business plan.</p> <p>11 Q. Where did the renegotiation letter go?</p> <p>12 MR. MCGLYNN: Well, that one, by the</p> <p>13 way, if you are looking for the exhibit attached to</p> <p>14 it, the one you handed out was incomplete.</p> <p>15 Q. I'm handing you Exhibit 62. Do you see in</p> <p>16 Paragraph 9 that you did agree to supply the</p> <p>17 information requested that was listed in Exhibit A?</p> <p>18 A. Yes.</p> <p>19 Q. Let me find Exhibit A.</p> <p>20 MR. MCGLYNN: While you are looking for</p> <p>21 it, do you want to take a two-minute break?</p> <p>22 MR. FALBY: Not unless you want to.</p> <p>23 MR. MCGLYNN: I mean, we can sit here</p> <p>24 and watch you, but I don't think any of those copies</p>

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<p>174</p> <p>1 have what you are looking for.</p> <p>2 MR. FALBY: Why do you say that?</p> <p>3 MR. MCGLYNN: Because it's the same one</p> <p>4 you handed to me.</p> <p>5 MR. FALBY: Your knowledge of my</p> <p>6 documents is impressive yet flawed.</p> <p>7 MR. MCGLYNN: Well, we're still looking</p> <p>8 and you can't find it. Let's take a two-minute</p> <p>9 break.</p> <p>10 MR. FALBY: Yes, touché.</p> <p>11 MR. MCGLYNN: Off the record.</p> <p>12 (Recess.)</p> <p>13 BY MR. FALBY:</p> <p>14 Q. I have handed you Exhibit 60, which has</p> <p>15 Exhibit A to the prenegotiation letter, which</p> <p>16 provides, among other things, the borrower would</p> <p>17 provide a current business plan for the property,</p> <p>18 including the budget for this year, detailing</p> <p>19 revenue and expense projections, et cetera.</p> <p>20 Having agreed to provide that, why</p> <p>21 didn't you give Lennar in writing a plan for the</p> <p>22 project with statements of where you expected money</p> <p>23 to come from to tide you over until there was</p> <p>24 revenue from the new tenant?</p>	<p>176</p> <p>1 this information with them, and I would have</p> <p>2 supplied it and I would have supplied a business</p> <p>3 plan, but you have to sit down with Lennar in order</p> <p>4 to make a business plan.</p> <p>5 Q. So -- strike that. Although you had agreed</p> <p>6 to provide a business plan, your plan for the</p> <p>7 property, in this letter, you weren't going to</p> <p>8 provide it until after you had a chance to sit down</p> <p>9 with them and look them in the eye?</p> <p>10 A. Well, I wanted the meeting right away.</p> <p>11 This would have taken time. A lot of these things</p> <p>12 would take time to get current. I wanted to have a</p> <p>13 meeting and get going with it.</p> <p>14 Q. When you didn't get a meeting right away,</p> <p>15 why didn't you furnish the stuff you agreed to</p> <p>16 furnish, including the business plan?</p> <p>17 A. They had most of the stuff.</p> <p>18 Q. They didn't have a business plan as to what</p> <p>19 your plan was for the property, did they?</p> <p>20 A. They knew -- they had been in business.</p> <p>21 They knew what you do with an empty building. You</p> <p>22 keep paying them until you find a tenant. That was</p> <p>23 the business plan, just go out and work our little</p> <p>24 tails off until we found a tenant. And then I told</p>
<p>175</p> <p>1 A. I don't know. There's no -- there was no</p> <p>2 tenant so it was very difficult to make an accurate</p> <p>3 business plan. I was waiting to sit down with them</p> <p>4 to go over it, because otherwise you can't do it. I</p> <p>5 was waiting for our meeting.</p> <p>6 Q. Did you have in mind some way to tide the</p> <p>7 property over until a tenant could be found who</p> <p>8 would pay rent?</p> <p>9 A. Yes.</p> <p>10 Q. And what was that plan?</p> <p>11 A. That plan was to access the reserve</p> <p>12 accounts, to access the reserve accounts that we had</p> <p>13 in the attorneys' office and, if need be, go into</p> <p>14 our pockets for additional funds.</p> <p>15 Q. But you didn't put that plan in writing,</p> <p>16 and you didn't furnish it to Lennar?</p> <p>17 A. That's correct. I told you why.</p> <p>18 Q. Because you wanted a sit-down meeting?</p> <p>19 A. You have to have a sit-down meeting first</p> <p>20 before you do anything.</p> <p>21 Q. Notwithstanding that, you had agreed in the</p> <p>22 prenegotiation letter to provide a business plan for</p> <p>23 what you would do with the property?</p> <p>24 A. I -- they had -- Lennar had almost all of</p>	<p>177</p> <p>1 you where the 6 million plus was coming from.</p> <p>2 Q. You never told Lennar where the 6 million</p> <p>3 plus was coming from --</p> <p>4 A. I didn't, but --</p> <p>5 Q. You have to wait for me to finish the</p> <p>6 question. You never told Lennar that you had 6</p> <p>7 million in reserve accounts held by Royall</p> <p>8 Associates Realty Trust ready to devote to the</p> <p>9 building, did you?</p> <p>10 A. I would have had I had a meeting.</p> <p>11 Q. But in advance of the meeting, you never</p> <p>12 put that in a business plan of the sort that you</p> <p>13 agreed to provide in the prenegotiation letter, did</p> <p>14 you?</p> <p>15 A. Yes, that's correct.</p> <p>16 Q. Similarly, you didn't provide Lennar with</p> <p>17 the financial statements of the guarantors,</p> <p>18 yourself, to show your financial resources and</p> <p>19 ability to contribute money to the property, did</p> <p>20 you?</p> <p>21 A. I was waiting for the meeting to show them.</p> <p>22 Q. Notwithstanding you agreed to provide it in</p> <p>23 the prenegotiation letter, you never did provide it</p> <p>24 after signing that letter, did you?</p>

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1 Q. When you say "obligation," you mean an
2 ethical and moral obligation?
3 A. Ethical, moral, and probably legal. I'll
4 have to check with an attorney on that.
5 Q. Okay. Now, did you think that when Lennar
6 would sit down with you, they had any obligation of
7 any sort to agree to your workout plan for the
8 property?
9 A. That's up to them. That's their decision.
10 Q. They were free at a meeting to tell you to
11 pound sand, weren't they?
12 A. Say that again.
13 Q. They were free at a meeting to tell you to
14 pound sand, weren't they?
15 A. Yes.
16 MR. MCGLYNN: Objection.
17 Q. What did you think the property was worth
18 as of November 2004?
19 A. A lot of money.
20 Q. How much?
21 A. 40-odd-million-dollars.
22 Q. Did you have an appraisal done at that
23 time?
24 A. No.

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1 Q. What would you have paid for the property
2 as of November '04?
3 MR. MCGLYNN: Objection.
4 A. I can't answer that.
5 Q. Why not?
6 A. I don't know. I know what it's worth.
7 What I'd pay for it, I don't know.
8 Q. Would you have paid 40-odd-million-dollars
9 for the property as of November '04?
10 A. I can't answer that.
11 Q. Why not?
12 A. I can't. I don't know what I would have
13 done. Looking back, I don't know what I would have
14 done. I know what it was worth. I know I wanted to
15 own it, but I didn't have to pay that because it
16 was -- the debt was only 33.
17 Q. Why did you think the property was worth
18 40-odd-million-dollars?
19 A. Because of what they got nextdoor and
20 what -- the rents they were getting around there,
21 and if we could get the rents, if we could find one
22 tenant, it would be worth that.
23 Q. An empty property is not worth as much as a
24 tenanted property, is it?

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1 A. No.
2 Q. Did you think that it made sense to compare
3 the empty, dark Blue Hills Office Park to the
4 vibrant, fully tenanted buildings nextdoor when you
5 were considering its value?
6 MR. MCGLYNN: Objection.
7 A. I thought -- I'm valuing it with a tenant,
8 and we were going to get a tenant.
9 Q. Well, you had been looking for a tenant for
10 18 months, right?
11 A. But they also -- those vibrant buildings
12 nextdoor were looking for tenants for eight to ten,
13 twelve -- for two years and they found one.
14 Q. You had been looking without success for a
15 tenant for 18 months, had you not?
16 A. That's true, because the buildings
17 nextdoor, the vibrant buildings that were worth a
18 lot of money, got the tenants.
19 Q. Because those were new buildings unlike
20 yours, correct?
21 A. That's correct.
22 Q. What was your equity in the building worth
23 as of November '04?
24 A. \$12 million plus.

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1 Q. How do you calculate that?
2 A. If the building was worth 40-odd-million
3 and the mortgage was 32 or whatever million.
4 Q. So you are figuring the building was worth
5 around 45 million?
6 A. 44, yeah.
7 Q. 44 million. Now, at the time did you think
8 the building was worth 44 million, or are you
9 telling me that because you have an expert now
10 that's telling you it's worth 44 million?
11 MR. MCGLYNN: Objection.
12 A. I'm telling you that right now for both
13 reasons. Plus I have an expert that reconfirmed my
14 thinking and I read it yesterday.
15 Q. But at the time -- even before your
16 economist opined that the fair market value as of
17 November '04 was 44 million, you at the time
18 actually thought it was worth that?
19 A. I thought it was worth a lot more than the
20 mortgage; otherwise, I wouldn't have wanted to sit
21 down and try to save the building, have all this
22 money in reserve.
23 Q. So if you thought you had \$12 million worth
24 of equity, why in the world didn't you bring the

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<p style="text-align: right;">194</p> <p>1 spend?</p> <p>2 A. A million or two.</p> <p>3 Q. But no more?</p> <p>4 A. No, not until we got a tenant.</p> <p>5 Q. You know what the owner who bought it for</p> <p>6 23 million is doing to it, don't you?</p> <p>7 A. No, I don't.</p> <p>8 Q. You haven't driven by and seen it?</p> <p>9 A. I haven't driven by it.</p> <p>10 Q. They're renovating the whole thing. You</p> <p>11 can see right through it today; are you aware of</p> <p>12 that?</p> <p>13 A. No. That doesn't mean they're right.</p> <p>14 Q. They are having to put into the building</p> <p>15 about as much as they paid for it; are you aware of</p> <p>16 that?</p> <p>17 A. So then it's worth 44 million.</p> <p>18 Q. Did the plan that you had in mind for the</p> <p>19 building require -- let me back up. Your plan for</p> <p>20 the building involved using money in the reserves</p> <p>21 and also using the 5 plus million dollars you had in</p> <p>22 an account being held by the attorneys for Royall</p> <p>23 Associates, right?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">196</p> <p>1 Q. Did you not have a meeting with your</p> <p>2 attorneys?</p> <p>3 A. Not until after November.</p> <p>4 Q. How come you didn't have a meeting prior to</p> <p>5 the foreclosure with your attorneys to talk about</p> <p>6 trying to stop it?</p> <p>7 A. Well, we had time to do it. I was in</p> <p>8 Florida and Mr. Langelier was in California. We</p> <p>9 were waiting to get together when we got notice of</p> <p>10 the suit.</p> <p>11 Q. You got notice of the suit or the</p> <p>12 foreclosure?</p> <p>13 A. Of whatever, I don't know.</p> <p>14 Q. How come you didn't get on the telephone</p> <p>15 and discuss with your attorneys a lawsuit to enjoin</p> <p>16 the foreclosure?</p> <p>17 A. I don't know. I can't recall exactly the</p> <p>18 timetable and what happened.</p> <p>19 Q. At some point did you make a decision not</p> <p>20 to try to enjoin the foreclosure sale?</p> <p>21 MR. MCGLYNN: Objection.</p> <p>22 A. I don't recall.</p> <p>23 Q. What you recall is that you were waiting</p> <p>24 for the opportunity to have a meeting with your</p>
<p style="text-align: right;">195</p> <p>1 Q. And the plan also involved some period of</p> <p>2 time where you would fix up the building and thereby</p> <p>3 be able to attract a tenant, get them in there, and</p> <p>4 fix up the building for them, right?</p> <p>5 A. Yes.</p> <p>6 Q. You anticipated, didn't you, that in order</p> <p>7 to do all that you were going to have to modify the</p> <p>8 loan document?</p> <p>9 A. Yes.</p> <p>10 Q. Did you think as of November 2004 that</p> <p>11 Lennar had no legal right to foreclose on the</p> <p>12 property?</p> <p>13 A. Say that once more.</p> <p>14 Q. Sure. As of November 2004, did you think</p> <p>15 that Lennar had no legal right to foreclose on the</p> <p>16 property?</p> <p>17 A. Yes.</p> <p>18 MR. MCGLYNN: Objection.</p> <p>19 Q. So why didn't you sue to enjoin the</p> <p>20 foreclosure?</p> <p>21 A. I was waiting for a meeting with our</p> <p>22 attorneys to sit down and to discuss it.</p> <p>23 Q. They wouldn't give you a meeting either?</p> <p>24 A. Oh (gesturing).</p>	<p style="text-align: right;">197</p> <p>1 attorneys to discuss the possibility of trying to</p> <p>2 stop the foreclosure, and before that meeting could</p> <p>3 occur, the foreclosure took place?</p> <p>4 A. I can't recall exactly the timetable there.</p> <p>5 I'll have to check. I just can't remember.</p> <p>6 Q. Well, searching your memory -- I'll ask the</p> <p>7 question again. Give me your best answer from your</p> <p>8 memory. If you thought Lennar had no right to</p> <p>9 foreclose on the property, why didn't you sue to</p> <p>10 enjoin the foreclosure?</p> <p>11 A. I'll have to ask my attorney that. I don't</p> <p>12 know why.</p> <p>13 Q. Did you ever discuss that with your</p> <p>14 attorney, that is, the subject of suing to enjoin</p> <p>15 the foreclosure?</p> <p>16 MR. MCGLYNN: Yes or no.</p> <p>17 A. I don't recall.</p> <p>18 MR. MCGLYNN: Or "I don't recall."</p> <p>19 Q. After the foreclosure sale how come you</p> <p>20 didn't sue to set it aside?</p> <p>21 MR. MCGLYNN: Objection.</p> <p>22 A. I don't know.</p> <p>23 Q. Did you discuss with your attorneys suing</p> <p>24 to set aside the foreclosure sale?</p>

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<p>214</p> <p>1 A. No.</p> <p>2 Q. Never encouraged you to think they were</p> <p>3 going to meet, right?</p> <p>4 A. Silence.</p> <p>5 Q. And your reaction to the silence was</p> <p>6 basically, "Fine. If they're not going to meet,</p> <p>7 we're not putting any money in"; is that right?</p> <p>8 A. That's right.</p> <p>9 Q. Even though the default they were</p> <p>10 complaining about -- 158,000 in taxes, 80,000 of</p> <p>11 escrow payments -- was small compared to what you</p> <p>12 thought was your \$12 million of equity,</p> <p>13 notwithstanding that, because they weren't going to</p> <p>14 meet with you, you weren't going to pay those</p> <p>15 amounts?</p> <p>16 A. That's right.</p> <p>17 Q. Did you ever consider, Mr. Fineberg, that</p> <p>18 putting something in writing to Lennar might make</p> <p>19 them interested in meeting and accomplish what you</p> <p>20 wanted, which was a sit-down meeting?</p> <p>21 A. No, I didn't think it would work.</p> <p>22 Q. Did you consider doing that, or did it just</p> <p>23 not occur to you?</p> <p>24 MR. MCGLYNN: Objection.</p>	<p>216</p> <p>1 getting his advice, I thought -- I came to that</p> <p>2 opinion.</p> <p>3 Q. That you didn't need to go?</p> <p>4 A. Right.</p> <p>5 Q. Who brought it up? Did Mr. Goldberg bring</p> <p>6 it up, or did you bring it up?</p> <p>7 MR. MCGLYNN: I want to instruct you not</p> <p>8 to discuss any substantive discussions you had with</p> <p>9 Attorney Goldberg.</p> <p>10 MR. FALBY: I'll just state for the</p> <p>11 record that he's told me all day about them, so he's</p> <p>12 waived any privilege, if any, as to discussions --</p> <p>13 MR. MCGLYNN: Well, we'll let the legal</p> <p>14 scholars and the judge determine that.</p> <p>15 MR. FALBY: That's fair enough, but I'll</p> <p>16 just state you can't have it both ways.</p> <p>17 Q. So before you talked to Mr. Goldberg on the</p> <p>18 subject of whether you needed to go to the lender</p> <p>19 with respect to the settlement or the payment or</p> <p>20 conveying that to the realty trust, did you consider</p> <p>21 that subject yourself? Were you thinking about</p> <p>22 that?</p> <p>23 A. I wasn't. I went to Mr. Goldberg</p> <p>24 immediately and found -- and asked him the question.</p>
<p>215</p> <p>1 Q. Do you have my question in mind?</p> <p>2 A. (Witness nods.) Just -- I considered it, I</p> <p>3 just didn't think it would work.</p> <p>4 Q. And even though you weren't getting a</p> <p>5 meeting, you didn't think it was worth a try to</p> <p>6 protect your \$12 million in equity?</p> <p>7 MR. MCGLYNN: Objection.</p> <p>8 A. No, I left that up to Mr. Goldberg to try</p> <p>9 to get a meeting to talk to them.</p> <p>10 Q. Back when you settled the zoning appeal,</p> <p>11 you said it didn't occur to you independently that</p> <p>12 you needed to talk to the lender about it, right?</p> <p>13 A. I was advised that I didn't have to talk to</p> <p>14 the lender about it.</p> <p>15 Q. Right, you were advised that by</p> <p>16 Mr. Goldberg, right?</p> <p>17 A. That's correct.</p> <p>18 Q. Then I asked you whether independently you</p> <p>19 considered whether you should go to the lender and</p> <p>20 tell them about the settlement and the payment and</p> <p>21 what you wanted to do with it, and you said, I</p> <p>22 think, that independently you didn't think of that;</p> <p>23 is that right?</p> <p>24 A. Well, after talking with Mr. Goldberg and</p>	<p>217</p> <p>1 Q. So you asked him the question whether you</p> <p>2 had to go to the lender?</p> <p>3 A. Yes.</p> <p>4 Q. 'Cause it had occurred to you that you</p> <p>5 might have to go to the lender?</p> <p>6 A. He advised --</p> <p>7 MR. MCGLYNN: Again, no substantive</p> <p>8 discussion between you and your attorney.</p> <p>9 A. No substantive discussion.</p> <p>10 Q. I'm not asking that. I'm saying, before</p> <p>11 you went to Mr. Goldberg, it had occurred to you</p> <p>12 that you might have to go to the lender on this,</p> <p>13 right?</p> <p>14 MR. MCGLYNN: Objection. That's not his</p> <p>15 testimony.</p> <p>16 THE WITNESS: Should I answer?</p> <p>17 MR. MCGLYNN: Do you understand the</p> <p>18 question?</p> <p>19 THE WITNESS: No.</p> <p>20 Q. Before you went and talked to Mr. Goldberg</p> <p>21 about this, it had occurred to you that you might</p> <p>22 have to go to the lender, right?</p> <p>23 MR. MCGLYNN: Objection.</p> <p>24 A. I don't think so. I think he told me we</p>

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<p style="text-align: right;">218</p> <p>1 needed --</p> <p>2 MR. MCGLYNN: Again, don't discuss --</p> <p>3 A. No, I didn't. I didn't even think about</p> <p>4 it.</p> <p>5 Q. You told me a second ago that you went to</p> <p>6 Mr. Goldberg and asked the question, right?</p> <p>7 A. Well, during the course of our</p> <p>8 conversations --</p> <p>9 MR. MCGLYNN: All right.</p> <p>10 THE WITNESS: All right.</p> <p>11 MR. MCGLYNN: I'm going to instruct you</p> <p>12 not to discuss what you discussed substantively with</p> <p>13 Attorney Goldberg.</p> <p>14 A. I can't discuss it.</p> <p>15 Q. All right. But if you've got a question in</p> <p>16 your mind you are going to take to your lawyer,</p> <p>17 obviously you thought about it, right?</p> <p>18 A. I could have.</p> <p>19 Q. And obviously what you were thinking about</p> <p>20 that you wanted to get your lawyer's advice on was,</p> <p>21 do we have to take this to the lender, right?</p> <p>22 A. Right.</p> <p>23 Q. So in fact, did you, before you talked to</p> <p>24 Mr. Goldberg, consider whether or not you should go</p>	<p style="text-align: right;">220</p> <p>1 in?</p> <p>2 MR. MCGLYNN: I'm going to object to</p> <p>3 that question.</p> <p>4 Q. Is that right?</p> <p>5 THE WITNESS: Can I answer?</p> <p>6 MR. MCGLYNN: If you can answer that</p> <p>7 question, then you are --</p> <p>8 A. That's right.</p> <p>9 MR. MCGLYNN: -- much smarter than</p> <p>10 anybody else in this room. Maybe you are.</p> <p>11 A. Do you want to read back the question?</p> <p>12 Q. Do you want to hear it again?</p> <p>13 A. No.</p> <p>14 Q. You understood it and you answered it?</p> <p>15 A. Yes.</p> <p>16 Q. (Gesturing.)</p> <p>17 A. Yes.</p> <p>18 Q. Now, in 1985 you purchased four properties</p> <p>19 from Net Realty Holding Trust for 29.6 million</p> <p>20 bucks, right?</p> <p>21 A. Yes.</p> <p>22 Q. And the beneficiary of Net Holding Trust or</p> <p>23 Net Realty Holding Trust was a Teamsters pension</p> <p>24 fund, right?</p>
<p style="text-align: right;">219</p> <p>1 to the lender and --</p> <p>2 A. I might have.</p> <p>3 Q. And then you decided to ask Mr. Goldberg</p> <p>4 whether you had to?</p> <p>5 MR. MCGLYNN: Objection. All right.</p> <p>6 The answer is yes or no or you might have.</p> <p>7 A. I might have.</p> <p>8 Q. Well, did you?</p> <p>9 MR. MCGLYNN: He said he might have.</p> <p>10 A. I might have. I can't recall.</p> <p>11 Q. So you don't recall, then, whether you</p> <p>12 brought this question to Mr. Goldberg or whether he</p> <p>13 brought it up to you?</p> <p>14 A. That's correct.</p> <p>15 Q. I take it sitting here today you are still</p> <p>16 relying on your attorney's advice that</p> <p>17 notwithstanding that Credit Suisse had security</p> <p>18 interests in any lawsuit that had anything to do</p> <p>19 with the property and any proceeds of any such</p> <p>20 lawsuit and any payment that resulted from any such</p> <p>21 lawsuit, that the \$2 million that you got from the</p> <p>22 zoning appeal that you brought as an abutter to</p> <p>23 complain about damage to the property is not</p> <p>24 anything that Credit Suisse has a security interest</p>	<p style="text-align: right;">221</p> <p>1 A. Yes.</p> <p>2 Q. And you had attained access to Net real</p> <p>3 estate properties as a result of a relationship you</p> <p>4 had with Stephen Watchmaker and Neil Zais?</p> <p>5 A. Yes.</p> <p>6 Q. And Mr. Watchmaker did accounting work for</p> <p>7 the Teamsters, did he?</p> <p>8 A. Yes.</p> <p>9 Q. And Mr. Zais -- am I pronouncing that</p> <p>10 right?</p> <p>11 A. Zais, yes.</p> <p>12 Q. Mr. Zais was his partner?</p> <p>13 A. Yes.</p> <p>14 Q. And Mr. Zais was a friend of yours?</p> <p>15 A. Yes.</p> <p>16 Q. From college?</p> <p>17 A. Yes.</p> <p>18 Q. And you were also partners in several</p> <p>19 ongoing business deals with both Mr. Watchmaker and</p> <p>20 Mr. Zais?</p> <p>21 A. Yes.</p> <p>22 Q. Then in 1992 the U.S. attorney in Boston,</p> <p>23 Wayne Budd in particular, indicted Watchmaker and</p> <p>24 Zais on racketeering charges, right?</p>

62 (Pages 242 to 245)

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<p style="text-align: right;">242</p> <p>1 it. I don't remember discussing it or remember it.</p> <p>2 Q. You told me before that sometimes you</p> <p>3 looked at your cc's and sometimes you didn't. Do</p> <p>4 you know if you looked at this one?</p> <p>5 A. This looks familiar, but I can't remember.</p> <p>6 Q. Do you know anything about the last 10,000</p> <p>7 of rent that EquiServe paid that Blue Hills didn't</p> <p>8 turn over to the lender?</p> <p>9 A. No.</p> <p>10 MR. MCGLYNN: Objection to the form.</p> <p>11 A. What? I didn't hear you.</p> <p>12 Q. Do you know anything about the last 10,000</p> <p>13 of rent paid by EquiServe?</p> <p>14 A. No.</p> <p>15 Q. Do you know whether it was turned over to</p> <p>16 the lender or not?</p> <p>17 A. I don't know.</p> <p>18 Q. Do you know whether it was deposited to the</p> <p>19 lockbox account?</p> <p>20 A. I don't know.</p> <p>21 Q. As of August '03, did Blue Hills own --</p> <p>22 strike that. As of August 2003, did Blue Hills</p> <p>23 Office Park LLC own anything other than Blue Hills</p> <p>24 Office Park?</p>	<p style="text-align: right;">244</p> <p>1 Q. And did you therefore distribute monies as</p> <p>2 often as the documents allowed?</p> <p>3 A. Yes.</p> <p>4 Q. So that any money that was in an account as</p> <p>5 of August 2003 would have been the necessary money</p> <p>6 to be used for operating expenses rather than some</p> <p>7 big build-up of money available for distribution?</p> <p>8 A. I don't understand, I don't understand.</p> <p>9 Q. Okay. As of August 2003, presumably there</p> <p>10 was still the operating account --</p> <p>11 A. Right.</p> <p>12 Q. -- that Fineberg Management operated?</p> <p>13 A. Yes.</p> <p>14 Q. It would have some amount of money in it to</p> <p>15 pay operating expenses, right?</p> <p>16 A. Yes.</p> <p>17 Q. And that would be it for the assets of Blue</p> <p>18 Hills Office Park, right, the park itself and the</p> <p>19 operating account?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know of any other assets that were</p> <p>22 owned by Blue Hills Office Park as of August '03</p> <p>23 rather than the operating account and the office</p> <p>24 park itself?</p>
<p style="text-align: right;">243</p> <p>1 A. Not that I know of.</p> <p>2 Q. Did it have any bank accounts other than</p> <p>3 the operating account that was controlled by</p> <p>4 Fineberg Management?</p> <p>5 A. I don't know.</p> <p>6 Q. We've talked today about monies that built</p> <p>7 up in reserve accounts, as you called them, for</p> <p>8 Royall Associates Realty Trust, right?</p> <p>9 A. Yes.</p> <p>10 Q. And that was money distributed from Blue</p> <p>11 Hills Office Park LLC to the trust, correct?</p> <p>12 A. Yes, yes.</p> <p>13 Q. Did Blue Hills ever retain money that was</p> <p>14 available for distribution to the members?</p> <p>15 MR. MCGLYNN: Objection as to form.</p> <p>16 A. I don't know.</p> <p>17 Q. Well, you and Bill Langelier made decisions</p> <p>18 about distributing money, right?</p> <p>19 A. Right.</p> <p>20 Q. And Mr. Langelier at least was interested</p> <p>21 in maximizing the benefits from his ownership of the</p> <p>22 property. Were you similarly interested in</p> <p>23 maximizing the benefits?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">245</p> <p>1 A. No, I don't.</p> <p>2 Q. And do you know how much money was usually</p> <p>3 in the operating account?</p> <p>4 A. No, I don't.</p> <p>5 Q. We saw at the end there was \$180,000 in it.</p> <p>6 Was that the amount that was usually in it?</p> <p>7 A. I don't know.</p> <p>8 Q. I've also heard from Mr. Stone that</p> <p>9 approximately \$175,000 a month came back to Blue</p> <p>10 Hills during the years '99 through 2004, after the</p> <p>11 waterfall went through the various buckets that were</p> <p>12 set up under the loan documents. Do you know</p> <p>13 whether that's true or not?</p> <p>14 A. I don't know.</p> <p>15 Q. Do you know how much of that 175,000 a</p> <p>16 month was used to pay operating expenses?</p> <p>17 A. No.</p> <p>18 Q. Is that amount of 175 -- strike that. If I</p> <p>19 also learned from Mr. Stone that the amount of the</p> <p>20 operating expenses every month was less than the</p> <p>21 175,000 or so that was coming out to Blue Hills</p> <p>22 every month -- okay? --</p> <p>23 A. Yes.</p> <p>24 Q. -- which suggests to me the amount in the</p>

EXHIBIT 5

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Exhibits: 33 - 44 Volume 1, Pages 1 - 211

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 05-CV-10506 (WJY)

BLUE HILLS OFFICE PARK LLC
Plaintiff, Defendant-in-Counterclaim

vs.

J.P. MORGAN CHASE BANK, et al.

Defendant

(Complete caption on next page.)

INDIVIDUAL and 30(b)(6) DEPOSITION OF BLUE HILLS

OFFICE PARK LLC BY DANIEL FRANK

Thursday, February 16, 2006, 10:08 a.m.

DLA Piper Rudnick Gray Cary US LLP

One International Place, 21st Floor

Boston, Massachusetts

----- Reporter: David A. Arsenault, RPR -----

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<p style="text-align: right;">2</p> <p>1 BLUE HILLS OFFICE PARK LLC</p> <p>2 Plaintiff, Defendant-in-Counterclaim</p> <p>3 vs.</p> <p>4 J.P. MORGAN CHASE BANK, as Trustee for the</p> <p>5 Registered Holders of Credit Suisse First Boston</p> <p>6 Mortgage Securities Corp., Commercial Mortgage</p> <p>7 Pass-Through Certificates, Series 1999-C1</p> <p>8 Defendant</p> <p>9 and</p> <p>10 CSFB 1999-C1 ROYALL STREET, LLC</p> <p>11 Defendant, Plaintiff-in-Counterclaim</p> <p>12 vs.</p> <p>13 WILLIAM LANGELIER and GERALD FINEBERG</p> <p>14 Defendants-in-Counterclaim</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">4</p> <p>1 PROCEEDINGS - 10:08 a.m.</p> <p>2 -----</p> <p>3 DANIEL FRANK, sworn</p> <p>4 -----</p> <p>5 MR. McGLYNN: Same stipulations?</p> <p>6 MR. FALBY: Yes, please.</p> <p>7 EXAMINATION</p> <p>8 BY MR. FALBY:</p> <p>9 Q. Mr. Frank, can you state your full name,</p> <p>10 please.</p> <p>11 A. Daniel Frank.</p> <p>12 Q. No middle name?</p> <p>13 A. No.</p> <p>14 Q. What is your residential address?</p> <p>15 A. 286 Clark Road, Brookline.</p> <p>16 Q. How long have you lived there?</p> <p>17 A. Let's see, '84.</p> <p>18 Q. Since 1984?</p> <p>19 A. Yes.</p> <p>20 Q. How old are you?</p> <p>21 A. I am just about ready to turn 70. I'm old.</p> <p>22 Q. Are you employed?</p> <p>23 A. Yes.</p> <p>24 Q. Where do you work?</p>
<p style="text-align: right;">3</p> <p>1 APPEARANCES:</p> <p>2 Bernkopf Goodman LLP</p> <p>3 Peter B. McGlynn, Esq.</p> <p>4 125 Summer Street</p> <p>5 Boston, Massachusetts 02110</p> <p>6 617.790.3000 fax: 617.790.3300</p> <p>7 pmcglynn@bg-llp.com</p> <p>8 for Blue Hills Office Park LLC,</p> <p>9 William Langelier and Gerald Fineberg</p> <p>10</p> <p>11 DLA Piper Rudnick Gray Cary US LLP</p> <p>12 Bruce E. Falby, Esq.</p> <p>13 Traci S. Feit, Esq.</p> <p>14 33 Arch Street, Floor 26</p> <p>15 Boston, Massachusetts 02110</p> <p>16 617.406.6000 fax: 617.406.6100</p> <p>17 bruce.falby@dlapiper.com</p> <p>18 traci.feit@dlapiper.com</p> <p>19 for J. P. Morgan Chase Bank, Trustee</p> <p>20 CSFB 1999-C1 Royall Street, LLC</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">5</p> <p>1 A. I work at the Fineberg Companies, One</p> <p>2 Washington Street, Wellesley.</p> <p>3 Q. What are the names of the Fineberg</p> <p>4 Companies that you work for?</p> <p>5 A. Fineberg Management and Fine Hotels.</p> <p>6 Q. What is your position?</p> <p>7 A. I'm president of both companies.</p> <p>8 Q. How long have you been president of</p> <p>9 Fineberg Management and Fine Hotels?</p> <p>10 A. I'll do it both ways.</p> <p>11 MR. McGLYNN: Let him get the question</p> <p>12 out; then answer.</p> <p>13 A. Fineberg Management January of 2000; Fine</p> <p>14 Hotels, January of 2003.</p> <p>15 Q. When did you first begin working for</p> <p>16 Fineberg Management.</p> <p>17 A. Back in '72.</p> <p>18 Q. When did you go to work for Fine Hotels?</p> <p>19 A. That happened in the year 2003.</p> <p>20 Q. What is the business of Fineberg</p> <p>21 Management?</p> <p>22 A. We own and manage real estate.</p> <p>23 Q. When you say we, who are you referring to?</p> <p>24 A. I'm referring to the company.</p>

7 (Pages 22 to 25)

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<p>1 A. Not really.</p> <p>2 Q. When you say not really instead of no, it</p> <p>3 makes me ask: Were you involved at all?</p> <p>4 A. No, no. Well, I mentioned my involvement.</p> <p>5 Q. Other than responding to Mr. Rubino's</p> <p>6 requests for the lease and for access to the</p> <p>7 property by his environmental engineer and engineer,</p> <p>8 were you at all involved in any other respect with</p> <p>9 the Credit Suisse refinancing or the negotiation of</p> <p>10 that loan?</p> <p>11 A. I, coupled with Larry Needle, I think,</p> <p>12 showed him the property.</p> <p>13 Q. Did you have anything else to do with the</p> <p>14 Credit Suisse refinancing?</p> <p>15 A. I don't think so.</p> <p>16 MR. McGLYNN: Off the record.</p> <p>17 (Discussion off the record.)</p> <p>18 Q. Mr. Frank, was Gerry Fineberg involved in</p> <p>19 the negotiation of the Credit Suisse loan to Blue</p> <p>20 Hills?</p> <p>21 A. I don't think so, but I'm not sure.</p> <p>22 Q. Was Mr. Langelier involved in the</p> <p>23 negotiation of the Credit Suisse loan to Blue Hills?</p> <p>24 A. Yes. He introduced us to Joe Rubino.</p>	22
<p>1 A. I imagine Andy Cohn, Bill Langelier's</p> <p>2 attorney did.</p> <p>3 Q. Prior to the Blue Hills deal, had</p> <p>4 Mr. Langelier done any deals with Fineberg</p> <p>5 Management?</p> <p>6 A. No.</p> <p>7 Q. This was his first deal with them?</p> <p>8 A. Yes.</p> <p>9 Q. Has he done any deals since?</p> <p>10 A. No.</p> <p>11 Q. So this is the only deal that Mr. Langelier</p> <p>12 has done with Mr. Fineberg?</p> <p>13 A. That is correct.</p> <p>14 Q. Do you know how Mr. Langelier's</p> <p>15 participation in the Blue Hills deal came about?</p> <p>16 A. He brought it to us.</p> <p>17 Q. Prior to the Blue Hills transaction, did</p> <p>18 Mr. Langelier know somebody at Fineberg?</p> <p>19 A. Gerry Fineberg.</p> <p>20 Q. How did he know him, do you know?</p> <p>21 A. Socially.</p> <p>22 Q. Do you know what prompted Mr. Langelier to</p> <p>23 bring the Blue Hills deal to Fineberg Management?</p> <p>24 A. No. Aside from looking for a partner with</p>	24
<p>1 Q. Do you know if Mr. Langelier was involved</p> <p>2 in the negotiation of any of the terms of the loan</p> <p>3 from Credit Suisse?</p> <p>4 A. I do not know.</p> <p>5 Q. Was Mr. Needle involved in the negotiation</p> <p>6 of any of the terms of the loan from Credit Suisse</p> <p>7 to Blue Hills?</p> <p>8 A. No.</p> <p>9 Q. Do you know of anyone other than</p> <p>10 Mr. Goldberg who was involved on behalf of Blue</p> <p>11 Hills in negotiating the terms of the loan from</p> <p>12 Credit Suisse?</p> <p>13 A. Mr. Donovan.</p> <p>14 Q. What involvement did Mr. Donovan have in</p> <p>15 the negotiation of the terms of the loan from Credit</p> <p>16 Suisse?</p> <p>17 A. Supplied facts and figures.</p> <p>18 Q. Did he have any other involvement in the</p> <p>19 loan negotiation?</p> <p>20 A. I don't know. I doubt it.</p> <p>21 Q. Did anyone else have any involvement --</p> <p>22 A. I would imagine.</p> <p>23 Q. Did anyone else have any involvement in the</p> <p>24 negotiation of the Credit Suisse loan to Blue Hills?</p>	23
<p>1 money.</p> <p>2 Q. So as far as you know, what prompted</p> <p>3 Mr. Langelier to bring the Blue Hills deal to</p> <p>4 Fineberg Management was his desire to find a money</p> <p>5 partner?</p> <p>6 A. A partner.</p> <p>7 Q. With money?</p> <p>8 A. With money, sure.</p> <p>9 Q. Is there a reason that Fineberg Management</p> <p>10 has not done any deals with Mr. Langelier since the</p> <p>11 Blue Hills transaction?</p> <p>12 A. There's been no communication about other</p> <p>13 deals; at least I haven't had any. And then Bill</p> <p>14 Langelier moved to San Francisco. I forgot.</p> <p>15 Q. Where did he live when he brought the Blue</p> <p>16 Hills deal to Fineberg Management?</p> <p>17 A. Brookline, I believe.</p> <p>18 Q. At the time of the negotiation of the Blue</p> <p>19 Hills loan, did you review the mortgage financing</p> <p>20 application?</p> <p>21 A. I may have looked at it. I don't remember.</p> <p>22 Q. Do you recall discussing any points about</p> <p>23 the financing with anyone at Blue Hills?</p> <p>24 A. I don't remember.</p>	25

11 (Pages 38 to 41)

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<p>1 A. Yes.</p> <p>2 Q. You understand from that substantial</p> <p>3 experience over the course of many years with</p> <p>4 lenders that ultimately the terms of loans are</p> <p>5 governed by the mortgage loan documents?</p> <p>6 A. Yes.</p> <p>7 Q. At some point, Mr. Frank, did you learn</p> <p>8 that EquiServe, the tenant of Blue Hills Office</p> <p>9 Park, had applied with the owner of the property</p> <p>10 across the street for a special permit to build a</p> <p>11 parking garage across the street?</p> <p>12 A. I heard about it.</p> <p>13 Q. When did you learn about that?</p> <p>14 A. The exact date, I cannot say. I don't</p> <p>15 remember the exact date.</p> <p>16 MR. FALBY: Peter, can you put the book</p> <p>17 of exhibits before the witness?</p> <p>18 MR. McGLYNN: Sure. Would you like me</p> <p>19 to turn to any particular one?</p> <p>20 MR. FALBY: Number 9.</p> <p>21 Q. We are showing you Exhibit 9, which is the</p> <p>22 actual special permit application filed by EquiServe</p> <p>23 and National Development on or about April 3, 2003.</p> <p>24 First off, have you seen this document before?</p>	38
<p>1 A. It doesn't ring a bell.</p> <p>2 Q. Does the date on the document help you</p> <p>3 place in time when you heard that EquiServe had</p> <p>4 applied for a special permit to build a parking</p> <p>5 garage at the Blue View property across the street</p> <p>6 from Blue Hills Office Park?</p> <p>7 A. Somewhere I had heard that they were going</p> <p>8 to build a garage.</p> <p>9 Q. Can you place it in time at all?</p> <p>10 A. No.</p> <p>11 Q. How did you learn that EquiServe was going</p> <p>12 to build a garage?</p> <p>13 A. Through Larry Needle and perhaps through</p> <p>14 Ken Goldberg. I'm not sure. No, through Larry</p> <p>15 Needle.</p> <p>16 Q. What did Mr. Needle say to you on that</p> <p>17 subject?</p> <p>18 A. That they were building a garage.</p> <p>19 Q. Did he say anything else?</p> <p>20 A. No.</p> <p>21 Q. Did you say anything in response?</p> <p>22 A. Where is it going to be.</p> <p>23 Q. And he told you?</p> <p>24 A. Come out and look.</p>	39
<p>1 Q. Did he show you where it was going to be?</p> <p>2 A. Yeah.</p> <p>3 Q. What was your reaction?</p> <p>4 A. A garage that would be good for the</p> <p>5 neighborhood, because there was a problem with</p> <p>6 parking. We at the Blue Hills Office Park had four</p> <p>7 spaces per every thousand square feet. So we were</p> <p>8 in good shape. But cars were always spilling over</p> <p>9 onto the streets. And it was at times difficult.</p> <p>10 So a garage would be good.</p> <p>11 Q. Did you have any reaction at the time to</p> <p>12 learning of the garage beyond what you just told me?</p> <p>13 A. No.</p> <p>14 Q. Prior to learning about the garage, had you</p> <p>15 been involved in efforts to try to keep EquiServe in</p> <p>16 the Blue Hills Office Park either by extending their</p> <p>17 lease or selling them the building?</p> <p>18 A. Yes.</p> <p>19 Q. Can you describe what efforts you made in</p> <p>20 that regard?</p> <p>21 A. Several years prior to this, I had a</p> <p>22 sit-down meeting with Tom McGee and his boss. It</p> <p>23 was at the Customs House. They wanted to discuss</p> <p>24 the purchase of the building and/or an extension of</p>	40
<p>1 their lease.</p> <p>2 Q. The special permit application was April of</p> <p>3 2003?</p> <p>4 A. This?</p> <p>5 Q. Right.</p> <p>6 A. Yes.</p> <p>7 Q. When was the meeting with Mr. McGee and his</p> <p>8 boss?</p> <p>9 A. Sometime in 2002.</p> <p>10 Q. Who was Mr. McGee?</p> <p>11 A. He was with DST.</p> <p>12 Q. How is DST related to EquiServe?</p> <p>13 A. DST I believe is the parent company of</p> <p>14 EquiServe.</p> <p>15 Q. Who was Mr. McGee's boss with whom you met?</p> <p>16 A. I can't remember his name. It begins with</p> <p>17 a D.</p> <p>18 Q. Can you tell me who said what at the</p> <p>19 meeting between you, Mr. McGee and his boss?</p> <p>20 A. I think Tom McGee took the lead. I'm not</p> <p>21 sure exactly who took the lead. But there was</p> <p>22 discussions about them staying and purchasing the</p> <p>23 building.</p> <p>24 Q. Do you remember any of the particulars</p>	41

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<p style="text-align: right;">74</p> <p>1 correct?</p> <p>2 MR. McGLYNN: Objection.</p> <p>3 A. Say that again, please.</p> <p>4 Q. Did the \$2 million payment -- strike that.</p> <p>5 Did Blue Hills Office Park LLC receive the \$2</p> <p>6 million settlement payment?</p> <p>7 A. Not that I know of. You know what? The</p> <p>8 answer is no.</p> <p>9 Q. Why did you just change your answer?</p> <p>10 A. Because when I realized what the question</p> <p>11 was, I answered it.</p> <p>12 Q. So no part of the \$2 million settlement</p> <p>13 payment ever came to Blue Hills Office Park LLC?</p> <p>14 A. Not that I know of.</p> <p>15 Q. And if it had, you would know, wouldn't</p> <p>16 you?</p> <p>17 A. More than likely, yes.</p> <p>18 Q. I take it Mr. Fineberg made the decision as</p> <p>19 to the disposition of the \$2 million settlement</p> <p>20 payment?</p> <p>21 A. I do not.</p> <p>22 Q. Were you involved in any discussions as to</p> <p>23 the disposition of the \$2 million settlement</p> <p>24 payment?</p>	<p style="text-align: right;">76</p> <p>1 they were going to move at that point, that there</p> <p>2 was no keeping them.</p> <p>3 Q. You understood then as a result of the</p> <p>4 settlement that EquiServe would definitely be moving</p> <p>5 out?</p> <p>6 A. Yes.</p> <p>7 Q. And that the settlement of the lawsuit by</p> <p>8 which you hoped to keep them in would ensure that</p> <p>9 they would be leaving?</p> <p>10 A. We were told by attorneys, our attorneys,</p> <p>11 that we would not prevail.</p> <p>12 Q. You need to answer my question. I'm</p> <p>13 surprised Mr. McGlynn is letting you testify as to</p> <p>14 what attorneys told you.</p> <p>15 MR. McGLYNN: It came out so fast, I</p> <p>16 didn't have an objection. I couldn't object.</p> <p>17 Q. You understood, did you not, that the</p> <p>18 settlement of the lawsuit ensured that EquiServe</p> <p>19 would be moving out of the Blue Hills Office Park?</p> <p>20 MR. McGLYNN: Again, I have instructed</p> <p>21 you before, don't discuss the substance of</p> <p>22 discussions that you have had with attorneys, Dan.</p> <p>23 A. I think so.</p> <p>24 Q. Exhibit 10 is the lease termination</p>
<p style="text-align: right;">75</p> <p>1 A. I was not.</p> <p>2 Q. Do you know if Mr. Langelier was involved</p> <p>3 in any discussions about the disposition of the \$2</p> <p>4 million settlement payment?</p> <p>5 A. I have no idea.</p> <p>6 Q. Do you know why the \$2 million settlement</p> <p>7 payment that the settlement agreement specified</p> <p>8 would be paid to Blue Hills Office Park was not in</p> <p>9 fact paid to Blue Hills Office Park?</p> <p>10 A. I have no idea.</p> <p>11 Q. And you did not question that at the time</p> <p>12 because it did not occur to you?</p> <p>13 A. Correct. And I didn't feel there was any</p> <p>14 reason to question.</p> <p>15 Q. Why not?</p> <p>16 A. Because anything that was coming to me</p> <p>17 always came to me.</p> <p>18 Q. Do you have any memory of any settlement</p> <p>19 discussions at all?</p> <p>20 A. None.</p> <p>21 Q. You understood when the settlement was</p> <p>22 struck that part of the settlement included a lease</p> <p>23 termination agreement with EquiServe, correct?</p> <p>24 A. No. A lease termination agreement? I knew</p>	<p style="text-align: right;">77</p> <p>1 agreement with EquiServe. Have you seen that</p> <p>2 before?</p> <p>3 A. I'm not sure.</p> <p>4 Q. Did you review the documents settling the</p> <p>5 appeal of the special permit at the time?</p> <p>6 A. Did I review?</p> <p>7 Q. Did you review the documents by which the</p> <p>8 lawsuit appealing the special permit was settled at</p> <p>9 the time of the settlement?</p> <p>10 A. No.</p> <p>11 Q. Having seen Exhibit 10, do you now remember</p> <p>12 that part of the settlement included a lease</p> <p>13 termination agreement with EquiServe?</p> <p>14 A. I think so.</p> <p>15 Q. The lease termination addressed, did it</p> <p>16 not, the terms and conditions under which EquiServe</p> <p>17 would be departing the Blue Hills Office Park on or</p> <p>18 about July 31, 2004, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Did you have any discussion with</p> <p>21 Mr. Fineberg or Mr. Langelier at the time of the</p> <p>22 settlement about disclosing the payment of \$2</p> <p>23 million to Blue Hills' lender?</p> <p>24 A. I did not.</p>

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<p style="text-align: right;">106</p> <p>1 Q. Did you ask him why Lennar didn't want to 2 have a meeting? 3 A. I don't remember what I asked him after 4 that. I was so shocked that we weren't going to 5 have a meeting and an opportunity to get things 6 straightened out. 7 Q. Did you ask Mr. Polcari why you couldn't 8 have a meeting? 9 A. Again, I was so shocked, I don't know what 10 else I said to him. But the conversation ended 11 shortly after. I thought we were going to have a 12 meeting. 13 Q. Why did you think you were going to have a 14 meeting? 15 MR. McGLYNN: Objection. 16 A. Because of the tone of our conversation on 17 the 18th of October. It was a very nice, short 18 conversation, very friendly. 19 Q. I'm a little confused. During that October 20 18 conversation, did Mr. Polcari commit to a meeting 21 or did he say that he would have to check with his 22 superiors and get back to you? 23 A. He did say that. 24 Q. Which?</p>	<p style="text-align: right;">108</p> <p>1 recollection? 2 A. That is correct. 3 Q. Tell me about the first conversation that 4 you had with Mr. Polcari. When was it, to the best 5 of your memory? 6 A. In the summertime: Let's get together for 7 a meeting. 8 Q. What prompted you to speak with Mr. Polcari 9 in the summertime? 10 A. I say summertime. I should say summertime, 11 fall. Because we wanted to get this solved. We 12 wanted to find out a way to keep this particular 13 piece of property. We wanted to make it good. We 14 had two partners with deep pockets who were willing 15 to put up money. It was imperative that we have a 16 meeting. 17 Q. Did your conversation with Mr. Polcari 18 occur on the telephone? 19 A. Yes. 20 Q. Did it occur before or after Mr. Donovan 21 sent his August 5th letter asking for a meeting with 22 Wells Fargo? 23 A. Probably around the same time. I say 24 probably. I'm guessing.</p>
<p style="text-align: right;">107</p> <p>1 A. That he would have to check with his 2 superiors and get back to me. 3 Q. So he did not during that conversation 4 agree with your request for a meeting, did he? 5 A. He said he would have to check with his 6 superiors and get back to me. 7 Q. So he didn't agree to a meeting, did he? 8 A. He said he would have to check with his 9 superiors and get back to me. So whatever that 10 means, that's what it means. 11 Q. Did you understand from what he said that 12 he was agreeing to a meeting or that he would have 13 to check with his superiors and get back to you? 14 MR. McGLYNN: Objection. 15 Q. Go ahead. 16 A. That he would check with his superiors and 17 get back to me. 18 Q. Have you told me everything that you and 19 Mr. Polcari said to each other during the 20 conversation on October 18 and the follow-up 21 conversation five or six business days later? 22 A. To the best of my recollection, yes. 23 Q. And you don't know of any documents that 24 exist in the world that would refresh your</p>	<p style="text-align: right;">109</p> <p>1 Q. When did Lennar take over the loan as 2 special servicer? 3 A. I'm not quite sure. 4 Q. Did you call Mr. Polcari before or after 5 Lennar took over? 6 A. I must have called him. I don't know. I 7 don't know. 8 Q. Were you about to say that you must have 9 called him after Lennar took over? 10 A. I don't know how I would have gotten his 11 name. I really don't know. 12 Q. If you can turn in the exhibit book, 13 please, to Exhibit 28. 14 A. Yes. 15 Q. That is a letter dated August 19, 2004 from 16 Lennar in which it informed Blue Hills Office Park 17 that it was taking over as special servicer. Did 18 you see that at the time? 19 A. I think I did. 20 Q. And initially the asset manager from Lennar 21 who was involved was Joe Warshaw? 22 A. I've heard that name. 23 Q. Did you ever talk to him? 24 A. No.</p>

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<p style="text-align: right;">110</p> <p>1 Q. He was replaced by Mr. Polcari. Do you</p> <p>2 recall that sequence?</p> <p>3 A. No.</p> <p>4 Q. Do you have any reason to think that you</p> <p>5 talked to Mr. Polcari before he took over for</p> <p>6 Mr. Warshaw?</p> <p>7 A. I don't know.</p> <p>8 Q. Does it make sense to you that the</p> <p>9 conversation with Mr. Polcari took place after</p> <p>10 Mr. Polcari took over for Mr. Warshaw?</p> <p>11 A. I don't know.</p> <p>12 Q. If I tell you that Mr. Polcari had nothing</p> <p>13 to do with Blue Hills Office Park until he took over</p> <p>14 from Mr. Warshaw, does that help you?</p> <p>15 A. No.</p> <p>16 Q. In any event, you recall calling</p> <p>17 Mr. Polcari and asking for a meeting?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know whether it was before the</p> <p>20 letter Mr. Polcari sent on September 17 defaulting</p> <p>21 Blue Hills Office Park?</p> <p>22 A. I really don't.</p> <p>23 Q. In that conversation, did you do anything</p> <p>24 other than ask Mr. Polcari for a meeting?</p>	<p style="text-align: right;">112</p> <p>1 hundred thousand. A hundred thousand was not going</p> <p>2 to stand in our way of making a deal. We wanted to</p> <p>3 make a deal. I say deal. I really mean we wanted</p> <p>4 to have a meeting so that we could figure out a</p> <p>5 solution.</p> <p>6 Q. Why in light of that didn't the principals</p> <p>7 pay the real estate taxes?</p> <p>8 A. I don't know. We wanted a meeting.</p> <p>9 Q. I understand.</p> <p>10 A. We wanted a meeting to get things resolved.</p> <p>11 Q. And when you asked Joe Polcari for a</p> <p>12 meeting when you first called him, he said no,</p> <p>13 right?</p> <p>14 A. Yes.</p> <p>15 Q. Again, if you just focus on my question. I</p> <p>16 know you wanted a meeting. You have told me that.</p> <p>17 A. Yes.</p> <p>18 Q. If the principals were so intent on keeping</p> <p>19 the property, why didn't they pay the real estate</p> <p>20 taxes that were due on August 2, 2004?</p> <p>21 MR. McGLYNN: Objection.</p> <p>22 A. Well, we made a request in writing to have</p> <p>23 the principal, interest and taxes paid out of the</p> <p>24 reserve accounts. Joe Donovan did that. I'm aware</p>
<p style="text-align: right;">111</p> <p>1 A. No.</p> <p>2 Q. Did he respond?</p> <p>3 A. Which conversation?</p> <p>4 Q. The very first one.</p> <p>5 A. No meeting, I think is what he said.</p> <p>6 Q. Did you ask him why?</p> <p>7 A. I don't remember.</p> <p>8 Q. Did he say why there would be no meeting?</p> <p>9 A. Again, I don't remember.</p> <p>10 Q. If in that first conversation you asked for</p> <p>11 a meeting and he said no, what prompted you to call</p> <p>12 again on October 18 to ask again for a meeting?</p> <p>13 A. I never give up. And in my own mind I did</p> <p>14 not want to lose that asset. The partners did not</p> <p>15 want to lose that asset. The partners were in a</p> <p>16 position to come up with money. All we had to do</p> <p>17 was sit down and figure out a plan. That's why it</p> <p>18 was so important to have that meeting.</p> <p>19 Q. Do you know why, if the partners were so</p> <p>20 intent on keeping the property, they didn't pay the</p> <p>21 real estate taxes or the debt service?</p> <p>22 MR. McGLYNN: Objection.</p> <p>23 A. All I can say is that if we knew we were</p> <p>24 going to get foreclosed, we would have paid the</p>	<p style="text-align: right;">113</p> <p>1 of that letter. I guess you are too.</p> <p>2 Q. And so, why didn't the Blue Hills Office</p> <p>3 Park LLC pay the real estate taxes?</p> <p>4 MR. McGLYNN: Objection.</p> <p>5 A. Because we thought we were going to fund</p> <p>6 it.</p> <p>7 Q. When you say we, who do you mean?</p> <p>8 A. I mean Lennar, whoever was holding the</p> <p>9 money in the reserve accounts.</p> <p>10 Q. And when you say we, who are you referring</p> <p>11 to?</p> <p>12 A. Blue Hills Office Park.</p> <p>13 Q. Did you have anything to do with the</p> <p>14 request for access to the reserves that was made on</p> <p>15 August 2?</p> <p>16 A. I did not.</p> <p>17 Q. Do you know who made the decision to make</p> <p>18 that request?</p> <p>19 A. Joe Donovan.</p> <p>20 Q. Did you discuss it with him?</p> <p>21 A. I don't remember discussing it.</p> <p>22 Q. Do you know if he discussed it with anybody</p> <p>23 other than you?</p> <p>24 A. I do not know.</p>

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<p style="text-align: right;">122</p> <p>1 Mr. Needle had with Mr. Polcari?</p> <p>2 A. No. There may have been a telephone</p> <p>3 conversation, setting up the meetings. I really</p> <p>4 don't know.</p> <p>5 Q. Do you know of anyone other than you,</p> <p>6 Mr. Donovan and Mr. Needle who had any conversation</p> <p>7 or communication with Mr. Polcari on behalf of Blue</p> <p>8 Hills Office Park?</p> <p>9 A. I do not know.</p> <p>10 Q. Did you talk to anyone at Lennar -- I may</p> <p>11 have asked you this. Did you talk to anyone at</p> <p>12 Lennar other than Mr. Polcari?</p> <p>13 A. No one else.</p> <p>14 Q. Did anybody else at Blue Hills Office Park</p> <p>15 talk to anyone at Lennar other than Mr. Warshaw or</p> <p>16 Mr. Polcari?</p> <p>17 A. I don't know.</p> <p>18 Q. Have you told me about all the</p> <p>19 conversations you do know about that took place</p> <p>20 between Blue Hills Office Park and Lennar?</p> <p>21 A. I believe so. To the best of my knowledge,</p> <p>22 I believe so.</p> <p>23 (A recess was taken.)</p> <p>24 Q. Mr. Frank, we've established that on August</p>	<p style="text-align: right;">124</p> <p>1 wanted to be able, after we knew that you guys</p> <p>2 weren't going to foreclose, to come up with some big</p> <p>3 money, which we would need, the partners, and so we</p> <p>4 needed the comfort of sitting down with you.</p> <p>5 Q. Why did you need to come up with big money?</p> <p>6 A. Well, because we had to take care of Blue</p> <p>7 Hills Office Park from the standpoint of putting new</p> <p>8 tenants in there, and so on. That was going to cost</p> <p>9 a few bucks, as well as taking care of some of the</p> <p>10 interest structure, and so on. So we knew that</p> <p>11 above and beyond 4,100,000 that was sitting in</p> <p>12 escrow accounts, we would have to come up with money</p> <p>13 out of pocket.</p> <p>14 Q. Did you know that you were going to need to</p> <p>15 modify the loan documents?</p> <p>16 A. I have to say that I can't answer those</p> <p>17 kinds of questions. Those are questions that we</p> <p>18 would have counsel help us with and be with us while</p> <p>19 we were sitting down with Lennar.</p> <p>20 Q. Did you have any tenant prospects as of</p> <p>21 August 2004?</p> <p>22 A. Let's see. Let's go back. Yes, there were</p> <p>23 some tenant prospects. Interestingly, back in 2003</p> <p>24 we were negotiating with two major tenants. One of</p>
<p style="text-align: right;">123</p> <p>1 5, 2004 Mr. Donovan asked for a meeting, correct?</p> <p>2 A. Yes.</p> <p>3 Q. At some point after that you asked</p> <p>4 Mr. Polcari for a meeting, correct?</p> <p>5 A. Twice.</p> <p>6 Q. And you said it was imperative that you</p> <p>7 have a meeting, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Why did you want a meeting?</p> <p>10 A. I wanted a meeting to sit down and figure</p> <p>11 out a way for us to retain the Blue Hills Office</p> <p>12 Park. I'll give you one example. DST purchased the</p> <p>13 adjoining building to us. We all know that. That's</p> <p>14 one of the reasons why we are here. They paid X.</p> <p>15 And they sold it -- I think they paid 25 million.</p> <p>16 They sold it for 40 to \$50 million, and that's in a</p> <p>17 short period of time. So we knew that this piece of</p> <p>18 property was going to come back.</p> <p>19 Q. What did you need from Lennar that you</p> <p>20 required a meeting for?</p> <p>21 A. We needed to sit down with them, with</p> <p>22 counsel, and figure out a way to keep this -- for us</p> <p>23 to keep retention of the property, figure out a</p> <p>24 plan. We wanted to know about the funding. We</p>	<p style="text-align: right;">125</p> <p>1 them was New York Life. The other one was Dunkin'</p> <p>2 Donuts, Allied Domecq, I'm not sure that's how you</p> <p>3 pronounce it. It was a proposal that we sent out to</p> <p>4 Allied Domecq to take somewhere between 150 to</p> <p>5 210,000. We had two, three, I don't know how many</p> <p>6 showings. They were red hot for the building.</p> <p>7 What happens? New York Life had signed</p> <p>8 a letter of intent to move into 130 Royall. And</p> <p>9 that deal blew for some reason or another. Since it</p> <p>10 was 180,000 square feet, it was perfect for New York</p> <p>11 Life, because their real requirement was 180, 188,</p> <p>12 whatever it was, and it would be a single-tenant</p> <p>13 building. We were this close (indicating) to having</p> <p>14 a major tenant, and then it would have been</p> <p>15 gangbusters.</p> <p>16 Q. That was in 2003?</p> <p>17 A. The exact date in 2003, we would have to</p> <p>18 consult the sheets.</p> <p>19 Q. Did you think in August 2004 that Lennar</p> <p>20 was obligated to meet with you?</p> <p>21 A. Well, we thought it was the right thing to</p> <p>22 do. We thought that by not meeting with us that</p> <p>23 they had kicked us in the good old rear end.</p> <p>24 Q. Did you think that the loan documents</p>

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Page 141	<p>1 Commonwealth of Massachusetts?</p> <p>2 A. For a short period of time. Just to give</p> <p>3 you a little background, we owned a building</p> <p>4 downtown at 150 Causeway Street which was basically</p> <p>5 a building filled with government agencies, a</p> <p>6 tremendous amount from the Commonwealth of</p> <p>7 Massachusetts. So we knew the people, who to deal</p> <p>8 with.</p> <p>9 Q. I asked you about Cushman & Wakefield. You</p> <p>10 told me about something you were doing on your own.</p> <p>11 If you could focus on my question.</p> <p>12 A. I will.</p> <p>13 Q. As of July 2004, had Cushman & Wakefield</p> <p>14 identified any tenant prospects that were still</p> <p>15 viable?</p> <p>16 A. The answer is no. But that changes daily.</p> <p>17 Q. Although all of the prospects identified by</p> <p>18 Cushman & Wakefield as of July 2004 were no longer</p> <p>19 viable, you say you yourself were talking to the</p> <p>20 Commonwealth of Massachusetts?</p> <p>21 A. Yes.</p> <p>22 Q. And what were they looking for?</p> <p>23 A. Different departments. I was just trying</p> <p>24 to get some leads and go after them.</p>	Page 143	<p>1 don't mean to cross-examine you, counsel.</p> <p>2 Q. In some document I'll show you.</p> <p>3 A. Canton had the lowest rate, okay, of all</p> <p>4 the suburban. It was 16 percent at some particular</p> <p>5 time.</p> <p>6 Q. As you were talking to the Commonwealth of</p> <p>7 Massachusetts in July of 2004, were you responding</p> <p>8 to any particular RFP?</p> <p>9 A. No.</p> <p>10 Q. Had you as of July 2004, identified any</p> <p>11 agency or people within the Commonwealth of</p> <p>12 Massachusetts government as prospective tenants?</p> <p>13 A. No.</p> <p>14 Okay, if you turn to Page -- if you look</p> <p>15 at the 128 market, the rent vacancies, 15.3. Have</p> <p>16 you got a magic marker?</p> <p>17 Q. We'll not mark the exhibit. What's the</p> <p>18 page?</p> <p>19 MR. McGLYNN: 0896.</p> <p>20 Q. What are you looking at on this page?</p> <p>21 A. The 128 south, where Canton is part of.</p> <p>22 Q. It says overall vacancy rate, correct?</p> <p>23 A. Yeah. The next one is direct vacancy. I</p> <p>24 think overall includes sublets. Actual is the</p>
Page 142	<p>1 Q. Was there any particular agency that you</p> <p>2 had identified at that point in time that needed a</p> <p>3 large block of space such as was afforded by Blue</p> <p>4 Hills Office Park?</p> <p>5 A. I can't say a particular department, but</p> <p>6 they were always sending out RFPs for space. Also,</p> <p>7 Cushman & Wakefield was sending out mailers, was</p> <p>8 canvassing, and was advertising and was doing a real</p> <p>9 marketing effort to find us a tenant. Eventually we</p> <p>10 would have found a tenant.</p> <p>11 Q. You say that in the spirit of never giving</p> <p>12 up?</p> <p>13 A. I say that in the spirit of having done it</p> <p>14 for a long time.</p> <p>15 Q. The market in 2004 was pretty bad, wasn't</p> <p>16 it?</p> <p>17 A. Yes, it was.</p> <p>18 Q. There was a vacancy rate in suburban office</p> <p>19 space in Canton in particular of 45 percent, wasn't</p> <p>20 there?</p> <p>21 A. I don't think you are right. I think it</p> <p>22 was 16 percent.</p> <p>23 Q. One six percent?</p> <p>24 A. Yes. Where did you find 45 percent? I</p>	Page 144	<p>1 direct vacancy rate. I believe 15.3 is the figure.</p> <p>2 You can see that was better than any other comp.</p> <p>3 Q. Had Cushman & Wakefield told you to expect</p> <p>4 that rate to increase by the end of the year?</p> <p>5 A. I don't remember, to be truthful.</p> <p>6 Q. Which direction was the market going at the</p> <p>7 time?</p> <p>8 A. I don't remember. But it only takes one.</p> <p>9 I've been through good markets, bad markets. It</p> <p>10 only takes one. It only takes hard work and</p> <p>11 plugging. And we had a great product.</p> <p>12 Q. Do you recall Cushman & Wakefield telling</p> <p>13 you in March 2004 that the vacancy rate would</p> <p>14 increase towards the end of the year?</p> <p>15 A. Yeah, but that was only a forecast. Again,</p> <p>16 it only takes one.</p> <p>17 Q. Did in fact the vacancy rate on the South</p> <p>18 Shore corridor increase by the end of the year?</p> <p>19 A. I don't know. I know in July it was the</p> <p>20 smallest, 16.2. What am I saying? 15.3.</p> <p>21 Q. How was the market as of early August when</p> <p>22 you were looking for a meeting from Lennar?</p> <p>23 A. It wasn't wonderful.</p> <p>24 Q. In fact, it was pretty bad, wasn't it?</p>

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<p style="text-align: right;">Page 170</p> <p>1 by March 11th.</p> <p>2 Q. Now, where in the process of obtaining a</p> <p>3 tenant would renovations to the common areas of Blue</p> <p>4 Hills office space have come in?</p> <p>5 A. You know what? I can't give you an answer.</p> <p>6 Q. Is that a question for Larry Needle?</p> <p>7 A. No. But it depends on what -- the common</p> <p>8 areas were pretty good. They just needed some spit</p> <p>9 and polish.</p> <p>10 Q. Was Blue Hills Office Park going to have to</p> <p>11 make substantial improvements to the building</p> <p>12 infrastructure in order to attract a tenant?</p> <p>13 A. No. You could attract a tenant with what</p> <p>14 we have. Would we have to put in new vents for the</p> <p>15 HVAC system? Of course. Would that take a little</p> <p>16 bit of time? Yes. But in general, the building was</p> <p>17 in good shape.</p> <p>18 Q. In general, you wouldn't have needed to</p> <p>19 make substantial improvements to the building</p> <p>20 infrastructure in order to attract new tenants. Is</p> <p>21 that true?</p> <p>22 A. As the building stood through July 31st, it</p> <p>23 was in great shape, okay, great shape. You had</p> <p>24 people working there. It was really good. Then the</p>	<p style="text-align: right;">Page 172</p> <p>1 proposal.)</p> <p>2 Q. Exhibit 44 is dated May 13, 2003. Do you</p> <p>3 remember getting it on or about that day?</p> <p>4 A. I don't remember getting it. I know we got</p> <p>5 it.</p> <p>6 Q. Do you recall at least skimming through</p> <p>7 Spaulding & Slye's proposal?</p> <p>8 A. Yes.</p> <p>9 Q. Can you turn to Page 3 of their proposal?</p> <p>10 MR. McGLYNN: Can you give us a Bates</p> <p>11 number?</p> <p>12 MR. FALBY: 0910.</p> <p>13 Q. The last paragraph under the heading Our</p> <p>14 Approach says: "The main objective of the 150</p> <p>15 Royall Street assignment is to retain Boston</p> <p>16 EquiServe as a tenant and then most expeditiously</p> <p>17 lease up any remaining space."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. Do you agree that the main objective with</p> <p>21 respect to the office park was to retain Boston</p> <p>22 EquiServe as a tenant?</p> <p>23 A. We wanted to retain Boston EquiServe as a</p> <p>24 tenant. We didn't need a broker to tell us that.</p>
<p style="text-align: right;">Page 171</p> <p>1 tenant moves out and there's a little bit of</p> <p>2 scuffing and a little bit of this and a little bit</p> <p>3 of that. It was not going to be a big deal, but it</p> <p>4 could add up to some serious money.</p> <p>5 Q. As of July 31, 2004, did the building need</p> <p>6 substantial work to its infrastructure in order to</p> <p>7 attract a substantial tenant?</p> <p>8 A. I don't think so. It needed some, but not</p> <p>9 substantial. It needed tenant improvements.</p> <p>10 Q. I'm not asking about tenant improvements.</p> <p>11 I'm asking about improvements or renovations to the</p> <p>12 building's infrastructure.</p> <p>13 A. We are going to ask Larry Needle.</p> <p>14 Q. Your answer is that it might have needed</p> <p>15 some but not a lot, correct?</p> <p>16 A. Yeah. But I'll defer to Larry.</p> <p>17 Q. Do you remember talking to Spaulding & Slye</p> <p>18 as one of the candidates to be the leasing agent?</p> <p>19 A. Yeah.</p> <p>20 Q. Do you remember reviewing their proposal?</p> <p>21 A. I remember looking at it.</p> <p>22 MR. FALBY: Let's mark that as the next</p> <p>23 exhibit.</p> <p>24 (Marked, Exhibit 44, Spaulding & Slye</p>	<p style="text-align: right;">Page 173</p> <p>1 Q. So you agree with their statement of</p> <p>2 objective?</p> <p>3 A. Yeah. But by May 13 -- when did we receive</p> <p>4 the notice they were moving out?</p> <p>5 Q. You told me earlier that when you got their</p> <p>6 notice of termination on May 14th you didn't give</p> <p>7 up?</p> <p>8 A. Right, never give up.</p> <p>9 Q. You never give up.</p> <p>10 A. Go ahead, I'm sorry.</p> <p>11 Q. In any event, as of May 13th, the day</p> <p>12 before the May 14th notice you got from EquiServe,</p> <p>13 did you still agree that the main objective was to</p> <p>14 keep Boston EquiServe?</p> <p>15 A. Yeah, but we also didn't hire this broker.</p> <p>16 There must have been other things.</p> <p>17 Q. I know that. My question is very simple.</p> <p>18 Did you agree with their assessment that the main</p> <p>19 objective was to keep Boston EquiServe?</p> <p>20 A. That would have been one of our main</p> <p>21 objectives. That was our main objectives.</p> <p>22 Q. Was it the main objective?</p> <p>23 A. That was one of our main objectives.</p> <p>24 Q. What were your other main objectives?</p>

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<p>1 A. To rent it, no matter what.</p> <p>2 Q. Page 914, please.</p> <p>3 A. 914.</p> <p>4 Q. On Page 914, Spaulding & Slye set forth</p> <p>5 Scenario Number 1. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Scenario Number 1 says that Boston</p> <p>8 EquiServe would renew, right size and consolidate,</p> <p>9 correct?</p> <p>10 A. That's what if.</p> <p>11 Q. It is a what-if scenario, right?</p> <p>12 A. Yes.</p> <p>13 Q. They say: "Without a doubt this is the</p> <p>14 most financially beneficial scenario for the</p> <p>15 ownership." Do you see that in the last paragraph</p> <p>16 of the scenario?</p> <p>17 A. Yeah.</p> <p>18 Q. Did you agree with that assessment at the</p> <p>19 time?</p> <p>20 A. We would have hired them if we agreed with</p> <p>21 everything they said. I have no comment about that.</p> <p>22 Yes, we wanted to keep them. We did everything in</p> <p>23 our power to keep them. They wanted to move on.</p> <p>24 Q. My only question is, as of May 13 when this</p>	174
<p>1 the foreseeable future. Did you share that</p> <p>2 assessment as of May 2003?</p> <p>3 A. As I mentioned several times before, it</p> <p>4 only takes one.</p> <p>5 Q. I know. I just want you to answer the</p> <p>6 question.</p> <p>7 A. It wasn't good. But things happen</p> <p>8 overnight.</p> <p>9 Q. I appreciate your spirit. As of May 2003,</p> <p>10 is it true that market conditions were unfavorable?</p> <p>11 A. They were not good.</p> <p>12 Q. And for the foreseeable future, they</p> <p>13 weren't going to get any better?</p> <p>14 A. Well, I disagree with that. Because we</p> <p>15 knew that all bad things must come to an end. I</p> <p>16 don't know what period of time.</p> <p>17 Q. Next line: "Direct competition is new</p> <p>18 speculative buildings that have not leased in the</p> <p>19 last two-plus years."</p> <p>20 Is that an accurate statement of the</p> <p>21 direct competition that Blue Hills Office Park faced</p> <p>22 in May of 2003?</p> <p>23 A. I don't know.</p> <p>24 Q. Is that a factor that contributed to the</p>	176
<p>1 came your way, did you agree that the best scenario</p> <p>2 was to keep EquiServe?</p> <p>3 A. Yeah.</p> <p>4 Q. That's why you filed the zoning appeal?</p> <p>5 A. Right.</p> <p>6 Q. Then Page 915, there's a scenario that they</p> <p>7 envision that EquiServe does not renew. Do you see</p> <p>8 that?</p> <p>9 A. Yes.</p> <p>10 Q. Spaulding & Slye then describes some of the</p> <p>11 challenges that presents. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. They said that one challenge would be a</p> <p>14 lengthier lease-up period of two-plus years. Do you</p> <p>15 see that?</p> <p>16 A. Yes.</p> <p>17 Q. Did you share Spaulding & Slye's assessment</p> <p>18 that if EquiServe did move out it was going to take</p> <p>19 up to two-plus years to lease up the building?</p> <p>20 A. Not if you got a 225,000-square-foot</p> <p>21 tenant. I can't answer that question. It is going</p> <p>22 to take some time.</p> <p>23 Q. The next assessment by Spaulding & Slye is</p> <p>24 that current market conditions are unfavorable for</p>	175
<p>1 fact that by October 17, 2004 Cushman & Wakefield</p> <p>2 despite their best efforts had not been able to find</p> <p>3 a live tenant by that date?</p> <p>4 A. They didn't want to give up. They kept</p> <p>5 going, because they would have found a tenant. In</p> <p>6 the year 2006 Blue Hills Office Park would have been</p> <p>7 filled.</p> <p>8 Q. I know I have asked a lot of questions.</p> <p>9 Focus on them one at a time and we'll get out of</p> <p>10 here. Does the direct competition that Spaulding &</p> <p>11 Slye describes here, that is, there were new</p> <p>12 speculative buildings that had not leased in the</p> <p>13 last two-plus years, one of the factors that</p> <p>14 resulted in Cushman & Wakefield not being able to</p> <p>15 come up with a tenant for the building between May</p> <p>16 2003 and October 2004?</p> <p>17 MR. McGLYNN: Objection.</p> <p>18 A. I don't even know. I can't make a comment.</p> <p>19 Q. Let's focus on May 2003. Is it the case as</p> <p>20 of May 2003 that the office park's direct</p> <p>21 competition was new speculative buildings that had</p> <p>22 not leased in the last two years?</p> <p>23 A. I don't know. All I know is that we know</p> <p>24 that 130 got leased. We know that 250 got leased.</p>	177

EXHIBIT 6

Exhibit: 340 Volume 1, Pages 1 - 210

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 05-CV-10506 (WJY)

BLUE HILLS OFFICE PARK LLC

Plaintiff, Defendant-in-Counterclaim

vs.

J.P. MORGAN CHASE BANK, et al.

Defendant

(Complete caption on next page.)

CONTAINS INFORMATION SUBJECT
TO CONFIDENTIALITY STIPULATION
DEPOSITION OF KENNETH GOLDBERG
Friday, April 7, 2006, 9:42 a.m.
DLA Piper Rudnick Gray Cary US LLP
33 Arch Street, 26th Floor
Boston, Massachusetts

----- Reporter: David A. Arsenault, RPR -----
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CONTAINS INFORMATION SUBJECT TO CONFIDENTIALITY STIPULATION
Kenneth Goldberg, April 7, 2006

<p style="text-align: right;">58</p> <p>1 me which entity received and retained the \$2 million</p> <p>2 settlement payment?</p> <p>3 A. I think I would need, to assist me to</p> <p>4 accurately answer that, to look at one more</p> <p>5 document.</p> <p>6 Q. What document?</p> <p>7 A. I'd like to look at, and it appears that</p> <p>8 you may have it there, the settlement agreement</p> <p>9 which gave rise to this payment.</p> <p>10 MR. McGLYNN: While you are looking for</p> <p>11 that, it jogs me to state on the record that, at</p> <p>12 least with respect to the \$2 million payment, that</p> <p>13 we are discussing the subject of that</p> <p>14 confidentiality stipulation. This portion of the</p> <p>15 record should be subject to that confidentiality</p> <p>16 stipulation.</p> <p>17 Q. I will grant your wish and show you Exhibit</p> <p>18 21, the settlement agreement.</p> <p>19 A. Thank you for granting my wish.</p> <p>20 Q. With the benefit of Exhibit 21, would you</p> <p>21 tell me which entity received and retained the \$2</p> <p>22 million settlement payment.</p> <p>23 A. I believe it was Blue Hills Office Park.</p> <p>24 Q. LLC?</p>	<p style="text-align: right;">60</p> <p>1 Q. One of the accounts to which the agreement</p> <p>2 refers is a supplemental account. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. That is defined as an account being held by</p> <p>5 the escrow agents, a term defined as you and</p> <p>6 Mr. Cohn?</p> <p>7 A. I don't know where you are reading.</p> <p>8 Q. The first page, last page, escrow agents is</p> <p>9 defined as you and Mr. Cohn?</p> <p>10 A. Yes.</p> <p>11 Q. And the supplemental account refers to an</p> <p>12 account held by you?</p> <p>13 A. Yes.</p> <p>14 Q. The balances of the accounts are listed on</p> <p>15 the last page of the document, right?</p> <p>16 A. Listed on the schedule of accounts.</p> <p>17 Q. The supplemental account, according to this</p> <p>18 document, contains \$4.2 million, correct?</p> <p>19 A. That is correct.</p> <p>20 Q. That included, did it not, the \$2 million</p> <p>21 settlement payment?</p> <p>22 A. It appears to, yes.</p> <p>23 Q. Plus interest?</p> <p>24 A. I'm going to presume so.</p>
<p style="text-align: right;">59</p> <p>1 A. Yes.</p> <p>2 Q. Let me show you Exhibit 176, an agreement</p> <p>3 among the beneficiaries of Royall Associates Realty</p> <p>4 Trust. Do you recognize that document?</p> <p>5 A. Vaguely.</p> <p>6 Q. Did you negotiate this --</p> <p>7 A. I believe I did.</p> <p>8 Q. I have to ask the question. Did you</p> <p>9 negotiate Exhibit 176?</p> <p>10 A. I believe I did.</p> <p>11 Q. The document is an agreement among the</p> <p>12 beneficiaries of Royall Associates Realty Trust,</p> <p>13 correct?</p> <p>14 A. Yes. Let me stop and look.</p> <p>15 MR. McGLYNN: Take a moment and review</p> <p>16 the document.</p> <p>17 A. (Witness complies.)</p> <p>18 Q. Having looked at the document, do you still</p> <p>19 agree that this was an agreement among the</p> <p>20 beneficiaries of Royall Associates Realty Trust?</p> <p>21 A. Yes.</p> <p>22 Q. The agreement refers to various accounts.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">61</p> <p>1 Q. And did the supplemental account -- strike</p> <p>2 that. Is the supplemental account the same account</p> <p>3 at Century Bank into which the \$2 million settlement</p> <p>4 payment was deposited according to Exhibit 177 on</p> <p>5 August 8, 2003?</p> <p>6 A. It appears to, yes.</p> <p>7 Q. Did that same account also contain an</p> <p>8 additional approximately \$2.2 million worth of</p> <p>9 funds?</p> <p>10 A. Yes.</p> <p>11 Q. And were those funds in the supplemental</p> <p>12 account held for the benefit of the beneficiaries of</p> <p>13 Royall Associates Realty Trust?</p> <p>14 MR. McGLYNN: Objection.</p> <p>15 A. No.</p> <p>16 Q. For whom were those funds held?</p> <p>17 A. I think that -- I don't want to get into</p> <p>18 terms of art and start splitting hairs. I think</p> <p>19 that this agreement was intended as an understanding</p> <p>20 amongst the, quote, beneficiaries, the owners, as</p> <p>21 you called them earlier, the venturers, to direct</p> <p>22 what was going to happen to the funds.</p> <p>23 Q. The venturers in what?</p> <p>24 A. They are the venturers who owned various</p>

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<p>62</p> <p>1 ownership interests in the real estate, the upper 2 tier which held title to the real estate, and in the 3 lower tier, the entity I'm just not sufficiently 4 familiar with. I think it might have been a trust. 5 So that it was generically, the owners were 6 directing what should happen to the money. 7 I think more importantly I should say it 8 differently. The owners were directing and 9 consenting to an understanding of what should happen 10 to the money. 11 Q. The money included the \$4.2 million that 12 was held in the supplemental account at Century 13 Bank? 14 A. It included the \$2 million that was held in 15 Century Bank. 16 Q. And did that account at Century Bank also 17 include the additional \$2.2 million that combined 18 with the settlement payment equals the \$4.2 million 19 balance reflected on the last page of the agreement? 20 A. It does not appear to. It looks like this 21 was a separate document, the Century Bank account, 22 since it is footed with the \$2 million at the 23 bottom. I don't understand the difference you are 24 making here.</p>	<p>64</p> <p>1 Park is for the benefit of its owners. 2 The answer is that this then became a 3 document among the owners telling the escrow agents, 4 and agreeing by the parties on what should happen to 5 the money and who should continue to hold it, what 6 should be distributed. 7 So the answer is that this did not -- I 8 mean, if you are hunting for me to say there was a 9 transfer, there was none. The money was paid over 10 in accordance with the agreement that you have given 11 me a copy of, which is your Exhibit 21. And it is 12 continued to be held by the payee, which is the 13 language I used. I don't know what else to say to 14 you. 15 Yes, and to the extent that somebody 16 owns something, it benefits them. They are the 17 beneficiaries. They are called beneficiaries, 18 because I think it appears that the owner was a 19 trust. So you would call them beneficiaries, which 20 is what you have to call them. So I think there's a 21 confusion by you're saying for the benefit of the 22 beneficiaries. Well, they are beneficiaries of a 23 trust, like they may be stockholders of a 24 corporation.</p>
<p>63</p> <p>1 Q. Exhibit 177 has a first page that looks 2 like a deposit to an account? 3 A. Yes. 4 Q. I asked you before if that account also 5 contained the remainder of the 4.2 million that is 6 listed as the balance of the supplemental account in 7 last page of the agreement marked as 176. Do you 8 know whether the Century Bank account into which the 9 settlement payment was deposited also contained the 10 additional 2.2 million that combined with the 11 settlement payment equaled the \$4.2 million balance 12 of the settlement account? 13 A. It appears this account contained \$2 14 million. I believe there was another account at 15 Century Bank or elsewhere with the balance. 16 Q. And the Century Bank account containing the 17 \$2 million was held for the benefit of the owners of 18 Blue Hills Office Park LLC? 19 A. It was held for the benefit of? I'm 20 confused, quite frankly. Let me see if I can ramble 21 on for a brief moment. It was held for the party 22 who received it, which was Blue Hills Office Park 23 LLC, I guess was the name of it. What happens here 24 is that ultimately that money in Blue Hills Office</p>	<p>65</p> <p>1 Q. Was the Century Bank account into which the 2 settlement payment was placed a client fund account? 3 A. Yes. 4 Q. For what client were those funds held? 5 A. In this case they were held for Blue Hills 6 Office Park for the \$2 million that we are talking 7 about which is the subject of the settlement which 8 is Exhibit 21. 9 Q. Were the additional \$2.2 million in the 10 supplemental account also held in a client fund 11 account for the client Blue Hills Office Park LLC? 12 A. I don't know the answer to that. I would 13 presume so. I do not have anything in front of me 14 that shows that it was or was not. Looking at the 15 tenor of the document, it would appear that it 16 probably was. 17 Q. Similarly, was the initial account 18 referenced in the agreement, Exhibit 176, held in a 19 client funds account? 20 MR. McGLYNN: You're talking about the 21 initial account, the so-called property account? 22 MR. FALBY: No, I'm talking about the 23 initial account. 24 A. I want to make sure that we are using the</p>

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<p>66</p> <p>1 same. We are looking at this agreement, which is</p> <p>2 Exhibit 176?</p> <p>3 Q. Yes.</p> <p>4 A. We are looking at that document schedule of</p> <p>5 accounts that's appended to it and the term initial</p> <p>6 account. Is that correct?</p> <p>7 Q. Yes.</p> <p>8 A. So now I will look at the document. It</p> <p>9 certainly states in Subparagraph F of Roman I -- the</p> <p>10 document speaks for itself -- the initial account</p> <p>11 was at the time this was signed held in escrow by</p> <p>12 Kenneth M. Goldberg and Andrew H. Cohn -- should</p> <p>13 have been Cohen -- escrow agents.</p> <p>14 Q. Was the money held in a client funds</p> <p>15 account?</p> <p>16 A. Yes, it says that.</p> <p>17 Q. And for what client were those funds held?</p> <p>18 A. I cannot tell you sitting here, except that</p> <p>19 it was held for the client in this case, which would</p> <p>20 have been the LLC or potentially if it was intended</p> <p>21 to have been distributed to the beneficiaries of the</p> <p>22 lower tier. I mean, this is a specific time. I</p> <p>23 cannot tell you at that time whether or not that</p> <p>24 was -- I just don't have the documents here.</p>	<p>68</p> <p>1 and Andrew H. Cohn.</p> <p>2 Q. Held in escrow for who?</p> <p>3 A. I don't know here sitting looking at this</p> <p>4 document. I don't have the rest of the documents</p> <p>5 here.</p> <p>6 Q. That's all I want to know.</p> <p>7 A...How would I know sitting here? I know we</p> <p>8 were holding it and it told us what Andrew Cohn and</p> <p>9 Kenneth Goldberg were supposed to do with the money.</p> <p>10 Q. Was there an escrow agreement that governed</p> <p>11 your holding in escrow of the funds of either Blue</p> <p>12 Hills Office Park LLC or Royall Associates Realty</p> <p>13 Trust or the members of the trust or the</p> <p>14 beneficiaries of the trust?</p> <p>15 A. I don't know whether there was a written</p> <p>16 agreement or a letter of understanding between</p> <p>17 Mr. Cohn and myself.</p> <p>18 Q. As of December 31, 2004, had the \$2 million</p> <p>19 settlement payment stayed in the Century Bank</p> <p>20 account into which it apparently was deposited on</p> <p>21 August 8, 2003 as indicated by Exhibit 177?</p> <p>22 MR. McGLYNN: Objection as to the form.</p> <p>23 Can you read it back?</p> <p>24 THE WITNESS: I understand it.</p>
<p>67</p> <p>1 Q. As of December 2004, had Blue Hills Office</p> <p>2 Park LLC distributed the amounts in the initial</p> <p>3 account to either its member or the beneficiaries of</p> <p>4 the member?</p> <p>5 A. We have an agreement dated December 31,</p> <p>6 2004. The initial account by definition is defined</p> <p>7 as on 12/31 as a million three and change. It was</p> <p>8 obviously then held subsequently in accordance with</p> <p>9 the terms distributed, paid out. Paid out.</p> <p>10 Q. Please listen to my question.</p> <p>11 A. Okay.</p> <p>12 Q. As of December 2004 --</p> <p>13 A. What date?</p> <p>14 Q. Before -- as of the date of the execution</p> <p>15 of this document --</p> <p>16 A. Super. Go ahead.</p> <p>17 Q. -- had the monies in the initial account</p> <p>18 previously been distributed by Blue Hills Office</p> <p>19 Park to its member or to the beneficiaries of the</p> <p>20 member?</p> <p>21 MR. McGLYNN: Objection as to form.</p> <p>22 A. I can only tell you that on the date of the</p> <p>23 execution of this document that there was</p> <p>24 \$1,381,814.39 held in escrow by Kenneth M. Goldberg</p>	<p>69</p> <p>1 A. It appears that this record, if we are</p> <p>2 tracing the funds, that money that was received</p> <p>3 pursuant to the settlement agreement you've shown me</p> <p>4 as Exhibit 21 was in a Banknorth IOLTA account. It</p> <p>5 stayed in that account until it was transferred to a</p> <p>6 Century Bank account. It appears, certainly given</p> <p>7 the dates, that these would have been -- and my</p> <p>8 memory is -- that these were the settlement funds</p> <p>9 paid to Blue Hills Office Park pursuant to this</p> <p>10 agreement and they stayed exactly where they were</p> <p>11 unless and until they were transferred out for</p> <p>12 interest purposes to another bank.</p> <p>13 Q. Is the reference to the Banknorth IOLTA</p> <p>14 account a reference to Bernkopf Goodman's IOLTA</p> <p>15 account at Banknorth?</p> <p>16 A. Yes, it is.</p> <p>17 Q. Prior to August 8, 2003 the \$2 million</p> <p>18 payment had gone into the IOLTA account?</p> <p>19 A. That is correct. And it stayed in an</p> <p>20 escrow account at Bernkopf Goodman.</p> <p>21 Q. I have seen reference to wires of monies</p> <p>22 upon the conveyance of the property next to Blue</p> <p>23 Hills Office Park that took place on August 6, two</p> <p>24 days prior to August 8, 2003. Do you know if the \$2</p>

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<p>1 million settlement payment was actually wired into 2 Bernkopf Goodman's IOLTA account on August 6, 2003? 3 A. I don't know. I mean looking at this and 4 looking at the timing, I have to presume this is the 5 money. I don't know if it went somewhere before. I 6 don't know the answer. 7 Q. In any event, the payment first went to 8 Bernkopf Goodman's IOLTA account, correct? 9 A. That is correct. 10 Q. That contains monies that belonged to 11 different clients, does it? 12 A. Yes. 13 Q. And then a wire of the \$2 million 14 settlement payment went shortly thereafter, it looks 15 like in a couple of days, into a Century Bank 16 account, correct? 17 A. I don't know that it was wired. It could 18 have been handled by check and opening of a new 19 account that earned interest. 20 Q. It says wire in from Banknorth IOLTA 21 account. 22 A. That shows when it came in from the 23 Banknorth account. I didn't write it, whether 24 that's reflective of the wire into the Banknorth</p>	<p>1 time of inception it is just a generic. I believe 2 that's a title, I believe, probably on our account 3 records. So that even if we sent bills, we just 4 internally identified Blue Hills Office Park LLC 5 under its prior -- under the name generically as 6 Royall Associates. That's what our office 7 characterized it and identified it as. 8 I don't know even if there is a Royall 9 Associates entity. That's what we called the 10 account for shorthand purposes in the office. It 11 might have said Fineberg-150 Royall Street, Canton, 12 which was just as likely. It was a way of 13 identifying whose money it was and whoever was the 14 owner there would have obviously been entitled to 15 it. 16 Q. So your testimony is that your office used 17 the words Fineberg Royall Associates to refer to 18 Blue Hills Office Park LLC? 19 A. No, what I said was very clear. 20 Q. If it was, I wouldn't have asked the 21 follow-up. 22 A. Well, let's try it again. Royall 23 Associates was a general term that we used for 24 matters we dealt with for 150 Royall Street, Canton.</p>
<p>1 IOLTA account or out to Century Bank, but it clearly 2 traced that \$2 million. It is a difference without 3 distinction. 4 Q. In any event, the money went from the 5 Banknorth IOLTA account maintained by Bernkopf 6 Goodman -- 7 A. That is correct. 8 Q. -- to a particular client funds account 9 obtained by Bernkopf Goodman at Century Bank? 10 A. That is correct. 11 Q. The account was maintained under the name 12 Fineberg Royall Associates; is that correct? 13 A. I can't answer that. I don't have the 14 account. Whether the account was in the name of 15 them -- all we did here, this was obviously produced 16 to you as a record of our office's handwritten card 17 to show where the money was. 18 Q. If the Century Bank account was held for 19 your client Blue Hills Office Park LLC, do you know 20 why it is that somebody wrote not Blue Hills Office 21 Park but Fineberg Royall Associates on this ledger 22 sheet that has been produced to us as the record of 23 the disposition of the settlement payment? 24 A. The answer is yes. I think that from the</p>	<p>1 Our office keeps its records generally consistent 2 with property addresses when we deal with real 3 estate transactions. By the same token, it says 4 Fineberg. It certainly was not Fineberg's money. 5 And, therefore, there's no intent here to 6 specifically set out the legal entity who is the 7 holder, nor is it here intended to say that they are 8 Gerry Fineberg's money. Nor is it intended to say 9 that Mr. Fineberg has the right to decide what to do 10 with it. It is just simply the label that's put on 11 it for the purpose of our internally knowing that in 12 fact this related to 150 Royall Street. I can't 13 attribute any more to it than that. 14 Likely the account was not in that name. 15 It was in the Bernkopf Goodman name. We just called 16 it Royall Associates for I think literally for 10 or 17 15 years. 18 Q. So although it says Royall Associates, the 19 money was actually received by Blue Hills Office 20 Park LLC? 21 A. Yes. That's set out in writing in Exhibit 22 21. It is very clear. 23 Q. And the money was then held in that account 24 until the beneficiaries of Royall Associates Realty</p>

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<p style="text-align: right;">74</p> <p>1 Trust directed its disposition in this agreement</p> <p>2 dated December 31, 2004; is that correct?</p> <p>3 A. No.</p> <p>4 Q. Did the money go somewhere else in the</p> <p>5 meantime?</p> <p>6 A. Yes.</p> <p>7 Q. Where did it go?</p> <p>8 A. It shows you. You just gave me the</p> <p>9 documentation of that.</p> <p>10 Q. If you take a moment and look at the last</p> <p>11 page.</p> <p>12 A. I guess maybe you are right. Maybe I</p> <p>13 misunderstood the question.</p> <p>14 Q. Sure. If you want to look at the second</p> <p>15 page.</p> <p>16 A. I did.</p> <p>17 Q. There's no transfer shown out of that</p> <p>18 account until February 2005?</p> <p>19 A. Got it.</p> <p>20 Q. So my question was this. The \$2 million</p> <p>21 settlement payment was held in the Century Bank</p> <p>22 account reflected by the first page of Exhibit 177</p> <p>23 until December 31, 2004 when its disposition was</p> <p>24 directed by the beneficiaries of the Royall</p>	<p style="text-align: right;">76</p> <p>1 with it. It is a very consistent thing. That's all</p> <p>2 it was. It was people that had an interest directly</p> <p>3 or indirectly in the money told us what to do with</p> <p>4 it.</p> <p>5 Q. I'm simply trying to establish what</p> <p>6 happened to the money.</p> <p>7 A. Okay.</p> <p>8 MR. McGLYNN: There's no question before</p> <p>9 you.</p> <p>10 Q. The \$2 million settlement payment stayed in</p> <p>11 the Century Bank account held by Bernkopf Goodman</p> <p>12 under the shorthand Fineberg Royall Associates until</p> <p>13 its disposition was directed, to use the word you</p> <p>14 just used, by the beneficiaries of Royall Associates</p> <p>15 Realty Trust in the December 31, 2004 agreement that</p> <p>16 we marked as Exhibit 176, correct?</p> <p>17 A. Yes, with one caveat. It was not held in</p> <p>18 an account called Fineberg Royall Associates.</p> <p>19 That's simply the manner in which the bookkeeper at</p> <p>20 Bernkopf Goodman identified the account. We do that</p> <p>21 by property address. It was not an account Royall</p> <p>22 Associates. That's what the people did to identify</p> <p>23 it. That probably was the client number the way</p> <p>24 they saw it for accounting, computer purposes.</p>
<p style="text-align: right;">75</p> <p>1 Associates Realty Trust in the agreement that we</p> <p>2 have marked as Exhibit 176, correct?</p> <p>3 A. I think your characterization is a little</p> <p>4 bit misguided. However, what we are saying here is</p> <p>5 that the \$2 million received under the settlement</p> <p>6 agreement noted in Exhibit 21 came into Bernkopf</p> <p>7 Goodman's IOLTA account at Banknorth and was then</p> <p>8 set up separately in Century Bank and kept until</p> <p>9 subsequently it was transferred out in accordance</p> <p>10 with the consent and direction of the people who had</p> <p>11 an equitable interest in it and as directed by this</p> <p>12 December 31, 2004 agreement.</p> <p>13 Q. That was an agreement among the</p> <p>14 beneficiaries of Royall Associates Realty Trust,</p> <p>15 correct?</p> <p>16 A. Because they were the owners. It is the</p> <p>17 same as -- I don't want to be mischaracterized here.</p> <p>18 Because they were the parties who if there were a</p> <p>19 misdelivery of funds would have the right to object.</p> <p>20 Just to make sure, since in an abundance of caution</p> <p>21 by counsel, both Andy Cohn and Ken Goldberg, myself,</p> <p>22 wanted to make sure that everybody who had a</p> <p>23 potential right to the money or claim or beneficial</p> <p>24 equitable interest in the money directed what we do</p>	<p style="text-align: right;">77</p> <p>1 Q. So let me see if I can get it right. The</p> <p>2 \$2 million settlement payment stayed in the Century</p> <p>3 Bank account reflected on the first Page of Exhibit</p> <p>4 177 until its disposition was directed by the</p> <p>5 beneficiaries of Royall Associates Realty Trust in</p> <p>6 the agreement dated December 31, 2004 that we've</p> <p>7 marked as Exhibit 176, correct?</p> <p>8 A. By the beneficiaries and trustees who are a</p> <p>9 party to that agreement, yes, that is correct.</p> <p>10 Q. How much time did your firm spend</p> <p>11 considering the issue of whether the settlement of</p> <p>12 the zoning appeal lawsuit or the disposition or</p> <p>13 receipt of the settlement payment ought to be</p> <p>14 reported to the lender?</p> <p>15 MR. McGLYNN: Objection. I think that</p> <p>16 gets into the province of work product. I instruct</p> <p>17 the witness not to answer.</p> <p>18 Q. Are you going to follow that instruction?</p> <p>19 A. Yes.</p> <p>20 Q. Did you report the determination that you</p> <p>21 had made about whether the settlement or the payment</p> <p>22 ought to be disclosed to the lender or its consent</p> <p>23 obtained to any client?</p> <p>24 MR. McGLYNN: Yes or no.</p>

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<p style="text-align: right;">78</p> <p>1 THE WITNESS: Could you read the</p> <p>2 question back. I must have misheard something.</p> <p>3 (Question read by the reporter.)</p> <p>4 THE WITNESS: Thank you.</p> <p>5 A. Yes.</p> <p>6 Q. What client or clients?</p> <p>7 A. I certainly reported that, without</p> <p>8 intending to waive in any manner the privilege, but</p> <p>9 trying to be responsive to your request, to</p> <p>10 Mr. Fineberg, Mr. Langelier, Mr. Cohn, Mr. Frank,</p> <p>11 the various capacities they held.</p> <p>12 Q. Did you inform those clients of the reasons</p> <p>13 for your determination?</p> <p>14 MR. McGLYNN: Yes or no or I don't know.</p> <p>15 A. Yes.</p> <p>16 Q. And what were the reasons that you came to</p> <p>17 that determination?</p> <p>18 MR. McGLYNN: Now I will instruct you</p> <p>19 not to answer. That involves substantive</p> <p>20 discussions with clients.</p> <p>21 A. I'm not going to answer.</p> <p>22 Q. Putting aside your discussions with the</p> <p>23 clients, what were the reasons that you determined</p> <p>24 that the settlement and the payment and the</p>	<p style="text-align: right;">80</p> <p>1 Q. What were the reasons for that</p> <p>2 determination?</p> <p>3 A. I think it was clear from my review of the</p> <p>4 loan documents that they had no interest in the</p> <p>5 claim, no say in whether or not the claim, which</p> <p>6 developed into an appeal, was made. I think the</p> <p>7 documents just simply were clear that the lender had</p> <p>8 no say in it, right to it, didn't have a lien on it.</p> <p>9 And there was -- it just was outside the bounds of</p> <p>10 the loan transaction. The collateral for the loan</p> <p>11 was clear. It was the real estate.</p> <p>12 Q. Have you finished your answer?</p> <p>13 A. Of course. That's why I stopped.</p> <p>14 Q. Did you have any conversations with anyone</p> <p>15 from Wells Fargo about the Blue Hills Office Park</p> <p>16 loan in 2003?</p> <p>17 A. I don't think so. I don't recall any at</p> <p>18 any point.</p> <p>19 Q. I know of none. I'm just asking. I'm not</p> <p>20 trying to trick you.</p> <p>21 MR. McGLYNN: Of course he was.</p> <p>22 A. I'm trying to think. The answer is I don't</p> <p>23 believe so.</p> <p>24 Q. Did you have any discussions with anyone</p>
<p style="text-align: right;">79</p> <p>1 disposition thereof didn't have to be disclosed to</p> <p>2 the lender or its consent obtained?</p> <p>3 MR. McGLYNN: I'm going to instruct the</p> <p>4 witness not to answer that particular form of the</p> <p>5 question. If you want to ask Mr. Goldberg whether</p> <p>6 or not he has an opinion or position with respect to</p> <p>7 the requirement of consent for this payment from the</p> <p>8 lender, that I will permit. I don't want to get</p> <p>9 into the substance of any discussions that</p> <p>10 Mr. Goldberg had with any client.</p> <p>11 Q. Well, as of the summer of 2003, what were</p> <p>12 the reasons that -- strike that. As of the summer</p> <p>13 of 2003, why did you determine that the settlement</p> <p>14 and the settlement payment didn't have to be</p> <p>15 disclosed to the lender?</p> <p>16 MR. McGLYNN: Objection as to the form.</p> <p>17 If you can answer the question, you may</p> <p>18 answer it.</p> <p>19 Q. Let me ask you a different way. You came</p> <p>20 to a determination that you didn't have to inform</p> <p>21 the lender of the settlement or the payment or its</p> <p>22 disposition or obtain the lender's consent thereto,</p> <p>23 correct?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">81</p> <p>1 from Wells Fargo in 2004 about the Blue Hills Office</p> <p>2 Park loan?</p> <p>3 A. I don't believe so.</p> <p>4 Q. Did you have any discussions with anyone</p> <p>5 from Lennar Partners in 2004 about the Blue Hills</p> <p>6 Office Park loan?</p> <p>7 A. Yes.</p> <p>8 Q. What was the first such conversation that</p> <p>9 you had?</p> <p>10 A. I had a conversation with a Mr. Brown in, I</p> <p>11 would say, probably June or July of 2004.</p> <p>12 Q. And how did you come to speak to Mr. Brown</p> <p>13 about the Blue Hills Office Park loan?</p> <p>14 A. There had been a very high level of</p> <p>15 frustration by my client in trying to reach somebody</p> <p>16 who would be responsive to talk about implementation</p> <p>17 of the loan terms. I had found out that --</p> <p>18 Q. My question was just simpler. How did you</p> <p>19 know Mr. Brown?</p> <p>20 A. How did I know him?</p> <p>21 Q. Yes.</p> <p>22 A. I had other transactions with him.</p> <p>23 Q. You were dealing with Mr. Brown in</p> <p>24 connection with a property owned by Fine Hotels or a</p>

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<p style="text-align: right;">82</p> <p>1 single-purpose entity connected with that in 2 Sturbridge, Massachusetts? 3 A. I don't know whether or not it was at the 4 same time. 5 Q. Well, what transaction or transactions did 6 you have with Mr. Brown? 7 A. We had had a number of discussions relating 8 to this client and other clients and loans-for which 9 Lennar was acting as special servicer or master 10 servicer. 11 Q. Do you recall what loans those were? 12 MR. McGLYNN: For other clients? 13 A. I think there were a couple of loans for 14 other clients for hotels in Massachusetts. There 15 was a property in Williamsburg, Virginia. There was 16 a property in Lancaster, Pennsylvania, a property in 17 Sturbridge. I think there were one or two others as 18 well. I just don't recall. I just had very 19 substantial dealings over the years with Lennar. 20 Q. What did you say to Mr. Brown on the 21 subject of the Blue Hills Office Park loan in June 22 or July of 2004? 23 A. Help. Could you find out, please, whether 24 or not you folks are the special servicer for that</p>	<p style="text-align: right;">84</p> <p>1 any way, whether in an internal memo, an email, a 2 time entry, a phone log or any other written or 3 computer-generated method? 4 A. I'm not a big note-taker. I'm not a big 5 computer-generated. I'm not a typist. That leaves 6 me as an antiquated, old-fashioned person with what 7 I believe is a reasonably good memory. So I 8 committed it to my memory and we followed up in the 9 ordinary course. 10 Q. So the answer to my question is that you 11 did not memorialize the conversation in any way? 12 A. I do not recall that I did. I might have 13 had a doodle pad in front of me, but that's just not 14 my practice. It was not adversarial. There was no 15 reason for me to keep a record of it. 16 Q. Did you have any subsequent conversation 17 with Mr. Brown about the Blue Hills Office Park 18 loan? 19 A. Yes, I did. 20 Q. When was that? 21 A. Again, I can't be sure sitting here. I 22 believe it was probably just before or after July 23 4th, because my vacation schedule would be such. I 24 believe it was early in July, maybe in late June,</p>
<p style="text-align: right;">83</p> <p>1 loan and if so just let me know where it stands, 2 please. Because we were, the client was having a 3 problem getting any kind of meaningful response out 4 of Wells Fargo. 5 Q. Did you say anything else to him? 6 A. At that first discussion, no. 7 Q. Was this first discussion in person or over 8 the telephone? 9 A. Telephone. My memory is that it was over 10 the telephone. 11 Q. What did Mr. Brown say? 12 A. He said he would look into it and call me 13 back. 14 Q. Did he say anything else? 15 A. Not to my recollection. 16 Q. Have you told me everything that you can 17 remember that you said to Mr. Brown and he said to 18 you during that first conversation about the Blue 19 Hills Office Park in June or July of 2004? 20 A. Yes. 21 Q. Did you make any notes of that 22 conversation? 23 A. No. 24 Q. Did you memorialize that conversation in</p>	<p style="text-align: right;">85</p> <p>1 wherein -- I'm not sure whether he actually -- I 2 believe he actually called me back responsive to my 3 request that he let me know whether or not it was or 4 was not Lennar who was the special servicer. 5 Q. What did he say when he called you back? 6 A. He said that when Lennar was the special 7 servicer that the loan was not then -- let me think 8 about this clearly -- that the loan was not then in 9 transit to Lennar. I had told him I thought it was. 10 He told me that it was not, and he suggested to me 11 that we should be in touch, in contact with Wells 12 Fargo. 13 And he made a specific suggestion of how 14 we could, what we should say in order to expedite 15 getting the file over to Lennar. At that time we 16 had a little bit of discussion about just the 17 property and what was going on and why I told him 18 time was of the essence. 19 Q. Do you recall anything else that he said to 20 you during that call? 21 A. No. I think that was the essence of the 22 conversation that we had. 23 Q. Do you recall anything else that you had 24 said to him?</p>

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<p style="text-align: right;">86</p> <p>1 A. I think there was actually -- the call 2 might have lasted ten minutes. I certainly covered 3 the -- I referenced the essence of it. Once again, 4 I'm not sure if it was that call or the prior one or 5 a subsequent one where I asked him whether or not -- 6 because I had experience dealing with him -- to whom 7 it would be assigned, and he made it clear to me 8 that he only dealt in hotel loans. I think only 9 dealing with the reason why time was of the essence, 10 that we were frustrated, that we had to get it 11 going; just a general discussion, and I had gotten 12 to know him well, about master servicers and general 13 servicers generally. Normal colloquy; that was the 14 essence of the discussion.</p> <p>15 Q. Did you tell him why time was of the 16 essence?</p> <p>17 A. Well, sure. We had discussed that. It was 18 a single -- again, we had -- the mention was that it 19 was a single-tenant property. There were a whole 20 host of ways that the client wanted to consider 21 going with the property. We wanted somebody to talk 22 to. He agreed that I was probably going to get 23 nowhere with Wells Fargo, that it had to be with the 24 special servicer.</p>	<p style="text-align: right;">88</p> <p>1 A. It did.</p> <p>2 Q. Those were both properties owned by 3 special-purpose entities of which the primary owner 4 was Mr. Fineberg?</p> <p>5 A. Or entities in which Mr. Fineberg had an 6 interest, a controlling interest.</p> <p>7 Q. Did you tell Mr. Brown why you were 8 frustrated?</p> <p>9 A. I don't know whether it was in that call or 10 the prior one. We had had a series of discussions 11 over the last months or a year, whatever it was, 12 years, just with the typical kinds of difficulties 13 special servicers had with master servicers, just 14 getting things done and personnel issues. But I 15 think it was very clear from the discussion that -- 16 what his advice was. And just make it known to 17 Wells Fargo and just get it done and that it needed 18 to be transferred.</p> <p>19 Q. What did he say? You said he made a 20 specific suggestion about what you should say to get 21 the file over to Lennar.</p> <p>22 A. He suggested that contact be made directly 23 with Wells Fargo and request them that it be 24 transferred to the special servicer since the loan</p>
<p style="text-align: right;">87</p> <p>1 Q. Did you say anything else about why time 2 was of the essence?</p> <p>3 A. I think just -- again, I think I've covered 4 it.</p> <p>5 Q. Did you say anything more specific about 6 the host of ways that the client wanted to go with 7 the property?</p> <p>8 A. No. The only thing I did say to him was 9 that this was a property -- because we had another, 10 a bunch of transactions, wherein the client had 11 turned back the property consistent with the terms 12 of the documents. I told him this was different 13 where the client really did intend to keep it. 14 That's why I looked forward to getting it over to 15 somebody who would at least start to talk to us 16 about the terms under which we could recapitalize 17 the loan, et cetera, recapitalize the property.</p> <p>18 Q. The bunch of transactions that you just 19 mentioned where you turned back the property 20 included the Sturbridge hotel that had been managed 21 by Fine Hotels?</p> <p>22 A. It did.</p> <p>23 Q. It also included the hotel in Lancaster 24 managed by Fine Hotels, correct?</p>	<p style="text-align: right;">89</p> <p>1 would have to be addressed given that the tenant was 2 leaving. And what were we going to do with the 3 property? We were facing a material change.</p> <p>4 Q. Did you discuss anything else with 5 Mr. Brown during that second call?</p> <p>6 A. I think related to this property, to the 7 best of my current recollection, we have covered it.</p> <p>8 Q. I take it you have no written 9 memorialization of that call?</p> <p>10 A. That is correct, I do not.</p> <p>11 Q. Did you have any subsequent conversation 12 with Mr. Brown about Blue Hills Office Park?</p> <p>13 A. Yes.</p> <p>14 Q. When?</p> <p>15 A. I think shortly afterwards. I think during 16 the a time when we were talking about something 17 else. By mid-July I spoke with him. He told me at 18 that time that the loan was being transferred. I 19 told him that we did make the call as he suggested 20 to Wells Fargo, and whatever he suggested that I say 21 it did cause an initiation of the transfer. The 22 presumption was that -- I believe that Chris Brown 23 also on his side, I think, helped get it over to 24 Lennar, since the client had had such little success</p>

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<p style="text-align: right;">90</p> <p>1 in dealing with Wells Fargo or getting anybody at 2 Wells Fargo in authority designated to handle that. 3 And I believe it was at that third call 4 or maybe even a subsequent one, I think it was the 5 third call that he told me that it was being 6 assigned to a fellow named Joe Warshaw there who 7 would be handling it; I would hear from him; and I 8 know he gave me his direct line. But the boxes, all 9 the files had not come over yet, and to give it a 10 chance, and that he would call me, if not get back 11 to him. That was sometime the end of July. So he 12 was helpful. 13 Q. Did he say anything else during that 14 conversation? 15 A. I don't recall. I think that was the 16 essence of it. He was pleased that it finally was 17 en route. I think he mentioned that he had a 18 positive thing to say about Joe Warshaw. He was an 19 experienced guy and we would enjoy working together. 20 Q. Did he say anything else? 21 A. I don't recall, as it relates to this 22 property. 23 Q. Did you say anything to Mr. Brown during 24 this third conversation about Blue Hills Office</p>	<p style="text-align: right;">92</p> <p>1 that third conversation with Mr. Brown? 2 A. No. 3 Q. Did you have any other conversations with 4 Mr. Brown about Blue Hills Office Park after that? 5 A. I think I might have been dealing with 6 Chris Brown about some other matters. My memory is 7 that sometime in August I mentioned that I had 8 gotten in touch with Joe Warshaw. My memory is, 9 just briefly, that I thanked him for whatever he did 10 to expedite getting the files over. And to the 11 extent that he could be helpful in getting us 12 together as quickly as possible, that would be 13 great, that kind of thing. He indicated that he's 14 going to call you. I believe that's the last 15 discussion that I had with Chris Brown on the 16 subject of this property and loan. 17 Q. In that answer you said that you told him 18 that you had gotten in touch with Joe Warshaw. Is 19 that right? 20 A. I believe by that time we had talked, yes. 21 That was responsive to your question and is there 22 any other discussion you had. I said yes, that I 23 had a follow-up discussion with him to thank him, 24 blah, blah, blah, having heard from Joe Warshaw or</p>
<p style="text-align: right;">91</p> <p>1 Park? 2 A. No more than we've already discussed. It 3 would have been a stream of conversations that 4 related to what the property was and what was going 5 on in the market, et cetera, et cetera. 6 Q. I'm asking you about this third 7 conversation where he called to tell you that the 8 loan was being transferred. Do you have any memory 9 of what you said to him during that conversation? 10 A. I think I have answered that. 11 Q. Have you now told me everything that you 12 said him or he to you during this third 13 conversation? 14 A. As I recall it now, we have covered the 15 subject matters discussed. 16 Q. So you have told me everything? 17 A. To the best of my recollection, yes, sir. 18 Q. And you have no memorialization of that 19 conversation? 20 A. If you're asking whether I took notes of 21 that conversation, I do remember writing down the 22 name Joe Warshaw, probably in my diary. He gave me 23 a telephone number and I wrote it down. 24 Q. Do you have any other memorialization of</p>	<p style="text-align: right;">93</p> <p>1 calling him or whatever. 2 Q. I'm trying to focus on what by my count was 3 the fourth conversation, which I understood that it 4 was sometime in August when you mentioned to him 5 that you had gotten in touch with Joe Warshaw. That 6 conversation. 7 A. Yes, either that I had gotten in touch with 8 him. I had gotten in touch with him. 9 Q. I was confused. 10 MR. McGLYNN: Let him finish the answer. 11 MR. FALBY: Let me explain the issue. 12 Q. I was confused because the end of your 13 answer was that Mr. Brown told you that Mr. Warshaw 14 would be calling you. 15 A. That was the third time. 16 Q. Okay. 17 A. I appreciate the comment. 18 Q. Let me ask again. I was asking about the 19 fourth conversation, the one after you wrote down 20 Joe Warshaw's name and number. Can you tell me 21 everything that Mr. Warshaw said to you -- strike 22 that. 23 Can you tell me everything that 24 Mr. Brown said to you and you said to him on the</p>

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<p style="text-align: right;">94</p> <p>1 subject of Blue Hills Office Park during the fourth</p> <p>2 conversation?</p> <p>3 A. I think I already did. It was a call</p> <p>4 generally on a very informal basis to say thank you.</p> <p>5 I presumed that he had been helpful to expedite</p> <p>6 this. A general discussion, anything that he could</p> <p>7 do to keep this on the top burner because time was</p> <p>8 important.</p> <p>9 Q. Is that your full memory of the fourth</p> <p>10 conversation with Mr. Brown?</p> <p>11 A. Yes, it is. No, I did not memorialize it</p> <p>12 except to recall it. I try to thank people when</p> <p>13 they are responsive to a request.</p> <p>14 Q. Did he say anything during that fourth</p> <p>15 conversation?</p> <p>16 A. Of course he said something. I don't</p> <p>17 understand the question, did he say something.</p> <p>18 Q. Do you remember anything he said?</p> <p>19 A. I think he said Joe Warshaw was a good guy,</p> <p>20 you will enjoy working with him. Whether or not</p> <p>21 there was four calls or three, it could have been</p> <p>22 three. But that's my memory sitting here today,</p> <p>23 that there were four distinct discussions, some of</p> <p>24 which may have been at another time relating to</p>	<p style="text-align: right;">96</p> <p>1 and what did you say?</p> <p>2 A. In an effort to be as exhaustive as</p> <p>3 possible as to my present memory, I think the</p> <p>4 discussion went as follows. He introduced himself.</p> <p>5 He told me that he was the account officer who would</p> <p>6 be in charge and handling the loan for the special</p> <p>7 servicer. I know he mentioned to me that he was</p> <p>8 pleased that there was somebody who had had</p> <p>9 experience and understood the process, referring to</p> <p>10 me. I know he referenced that he had spoken with</p> <p>11 Chris Brown, about my discussions with Chris. I</p> <p>12 know that we then discussed specifically -- I spent,</p> <p>13 I think, five or ten minutes explaining to him the</p> <p>14 borrower's perception of the current property, the</p> <p>15 market, and we thought the opportunity to get this</p> <p>16 matter resolved; and the commitment my client had to</p> <p>17 pursue a number of alternative courses to</p> <p>18 recapitalize the borrower, just that it fully</p> <p>19 intended to keep the property.</p> <p>20 I mentioned to him that -- it was clear</p> <p>21 from the initial part of the discussion that he had</p> <p>22 very little of the files there; requested that he</p> <p>23 get to the special servicer lockbox accounts so that</p> <p>24 he could confirm that there was a lot of money being</p>
<p style="text-align: right;">95</p> <p>1 other things. There were questions periodically</p> <p>2 that Chris Brown had of me over the years and he</p> <p>3 would call me on them.</p> <p>4 Q. Do you recall any discussion that you ever</p> <p>5 had at any point with Mr. Brown about Blue Hills</p> <p>6 Office Park other than what you've already told me?</p> <p>7 A. I believe that we have now discussed all of</p> <p>8 my discussions that I had with Chris Brown relating</p> <p>9 to Blue Hills Office Park.</p> <p>10 Q. And have I exhausted your memory as to the</p> <p>11 content of those calls?</p> <p>12 A. I'm invigorated but not exhausted; but my</p> <p>13 memory is exhausted about those calls, yes.</p> <p>14 Q. When did you first speak to Mr. Warshaw</p> <p>15 about the Blue Hills Office Park loan?</p> <p>16 A. Sometime in the middle of August.</p> <p>17 Q. That was a telephone call?</p> <p>18 A. Yes.</p> <p>19 Q. How long did that telephone call last?</p> <p>20 A. Probably ten minutes.</p> <p>21 Q. Did you call him or he call you?</p> <p>22 A. I think he may have called me. I may have</p> <p>23 called him. I'm not sure.</p> <p>24 Q. What did he say during that conversation</p>	<p style="text-align: right;">97</p> <p>1 held, and that that money together with somebody who</p> <p>2 was sufficiently well-heeled and committed to the</p> <p>3 property gave us an opportunity to get this property</p> <p>4 retenant and get back on line.</p> <p>5 The discussion ended with his again</p> <p>6 committing to be responsive. He was going to try to</p> <p>7 get more of the files. He said some of the boxes</p> <p>8 had just arrived. He didn't know what the terms of</p> <p>9 the loan documents were. There was a question that</p> <p>10 he raised at the time, I remember that, about</p> <p>11 whether or not losing the tenant primed the loan,</p> <p>12 which meant that that would automatically call the</p> <p>13 loan. I responded to him, no, no, no, that was not</p> <p>14 the deal, that I was familiar with the deal having</p> <p>15 been involved with the negotiation of its terms from</p> <p>16 the inception. He said he couldn't comment on that,</p> <p>17 that he hadn't gotten the loan documents yet. He</p> <p>18 said he would get back to me. I urged him to do</p> <p>19 that as quickly as possible.</p> <p>20 We talked about general market</p> <p>21 conditions as we perceived them here in Boston.</p> <p>22 Q. What did you say about that?</p> <p>23 A. We thought that -- based on my experience,</p> <p>24 I had told him that I thought that we had sufficient</p>

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<p style="text-align: right;">98</p> <p>1 experience. We felt that we were at the bottom of</p> <p>2 the market and that we were starting to come back.</p> <p>3 Actually, we felt pretty positive about it.</p> <p>4 Q. Did you say anything else about general</p> <p>5 market conditions?</p> <p>6 A. I think there may have been a discussion</p> <p>7 just generally. Thank you for asking, yes. I think</p> <p>8 there was a discussion about our perception of what</p> <p>9 had happened in Boston, that Boston was particularly</p> <p>10 hard hit in the suburbs by 9/11 and the lack of</p> <p>11 travel afterwards. But we think that the negative</p> <p>12 absorption in the office market, et cetera, was</p> <p>13 behind us.</p> <p>14 Q. Did you say anything that you recall</p> <p>15 specifically about the commitment to recapitalize</p> <p>16 and your client's desire fully to keep the property?</p> <p>17 A. I don't recall whether it was in that</p> <p>18 discussion or a subsequent one, where there was just</p> <p>19 a brief mention by me of the fact that there were</p> <p>20 potentially a number of different avenues available</p> <p>21 either by mez financing, additional capital by</p> <p>22 equity, bringing in new partners, or by one or more</p> <p>23 of the existing partners bringing in, adding new</p> <p>24 funds. There were just a number of alternatives,</p>	<p style="text-align: right;">100</p> <p>1 discussion.</p> <p>2 A. That's the end of it.</p> <p>3 Q. During that first discussion, did you talk</p> <p>4 about a 5 or \$10 million turnaround?</p> <p>5 A. I don't recall whether I put a number to it</p> <p>6 then.</p> <p>7 Q. Was that something you discussed in the</p> <p>8 second conversation?</p> <p>9 A. I think so. It could be partially in the</p> <p>10 first. I quite frankly don't recall whether I put a</p> <p>11 number to it.</p> <p>12 Q. Do you recall anything else that</p> <p>13 Mr. Warshaw said during the first conversation?</p> <p>14 A. Just committed to get the box, review the</p> <p>15 documents, he would get Wells Fargo to confirm as</p> <p>16 best he could the amounts that were in the reserve</p> <p>17 accounts. He just needed some time to review the</p> <p>18 documents and he would get back to us pretty</p> <p>19 promptly.</p> <p>20 Q. And did you say anything else to him in</p> <p>21 that first meeting that you haven't told me about?</p> <p>22 A. I don't think so. It was a telephone call,</p> <p>23 not a meeting.</p> <p>24 Q. Did you say anything else to Mr. Warshaw</p>
<p style="text-align: right;">99</p> <p>1 including seeking to attract tenant participation</p> <p>2 and ownership. That's why I thought it was just</p> <p>3 important to get somebody online with whom we could</p> <p>4 interact to consider the various alternatives.</p> <p>5 Q. What you just told me, did you tell</p> <p>6 Mr. Warshaw that during your first conversation with</p> <p>7 him?</p> <p>8 A. I think I made it clear in my last answer</p> <p>9 that I did not recall. My memory is that I think</p> <p>10 that it was probably more toward the second</p> <p>11 conversation.</p> <p>12 Q. Did Mr. Warshaw say anything to you that</p> <p>13 you haven't already told me about?</p> <p>14 A. I think once again, the discussion was that</p> <p>15 he was unsure what the terms of -- I think the most</p> <p>16 specific mention I had was that we thought it would</p> <p>17 be a 5 or \$10 million turnaround, that there was 4</p> <p>18 or \$5 million in the escrow accounts. We were</p> <p>19 talking about putting in, or raising, either way,</p> <p>20 and attracting funds. We talked about needing to</p> <p>21 take a look at the opportunity of either splitting</p> <p>22 up the business -- as a matter of fact, I did. I</p> <p>23 think in the second discussion --</p> <p>24 Q. I want you to confine yourself to the first</p>	<p style="text-align: right;">101</p> <p>1 during that first telephone call that you haven't</p> <p>2 told me about?</p> <p>3 A. My memory is that we generally exhausted</p> <p>4 the discussion.</p> <p>5 Q. Did you tell Mr. Warshaw that you were a</p> <p>6 lawyer but not acting as counsel in this</p> <p>7 circumstance?</p> <p>8 A. I have no memory of that. I understood</p> <p>9 that that came up before. I think I could well have</p> <p>10 mentioned that in fact -- I would never have said</p> <p>11 I'm not a lawyer. And it was very clear to him what</p> <p>12 my role was, given the fact that I know Chris Brown</p> <p>13 had talked to him and we had had a number of deals</p> <p>14 together, transactions, and we did act as counsel.</p> <p>15 There's no way I would have said I'm not a lawyer.</p> <p>16 The answer is that I did say to him that</p> <p>17 we would be actively involved, potentially in</p> <p>18 addressing capital requirements, which is one of the</p> <p>19 things I do do personally in my practice.</p> <p>20 Q. Did you tell him that you weren't acting as</p> <p>21 counsel?</p> <p>22 A. No, I would not have said that, because I</p> <p>23 don't how you are. You either are or you are not a</p> <p>24 lawyer. We do handle the transactions. So I would</p>

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<p style="text-align: right;">102</p> <p>1 have -- if we had discussions, I might have told him</p> <p>2 that with respect to the Boston market, that we have</p> <p>3 experience, that we are not typical of lawyers but</p> <p>4 also as developers or co-developers.</p> <p>5 Q. Were you acting as counsel when you talked</p> <p>6 to Mr. Warshaw that first time?</p> <p>7 A. I am what I am. I am a lawyer, and I do</p> <p>8 represent the Fineberg companies, Mr. Fineberg's</p> <p>9 company and his interests generally. The answer is,</p> <p>10 I don't know how I can say that I'm not a lawyer. I</p> <p>11 am a lawyer. Is it that I'm not dressed as a</p> <p>12 lawyer? I mean, don't talk to me because I'm going</p> <p>13 to take my lawyer? I don't quite understand the</p> <p>14 significance.</p> <p>15 Q. Were you talking to Mr. Warshaw in your</p> <p>16 capacity as counsel to Blue Hills Office Park LLC?</p> <p>17 A. That's who I am. That's who we were.</p> <p>18 Q. Were you talking to Mr. Warshaw in your</p> <p>19 capacity as a codeveloper with your client?</p> <p>20 A. No.</p> <p>21 Q. Did you tell Mr. Warshaw that you did the</p> <p>22 capital structuring?</p> <p>23 A. I believe there might have been a</p> <p>24 discussion, that certainly I do -- part of my work</p>	<p style="text-align: right;">104</p> <p>1 days after the first call, which was in the middle</p> <p>2 of the month.</p> <p>3 Q. So does that mean the second call was at</p> <p>4 the end of the month?</p> <p>5 A. Pretty near to the end of the month, yes,</p> <p>6 sir.</p> <p>7 Q. Who called who?</p> <p>8 A. I believe I called him.</p> <p>9 Q. Why did you call him?</p> <p>10 A. I had received then a copy of a quote of a</p> <p>11 letter from Lennar that was sent to me by my client.</p> <p>12 Q. What client?</p> <p>13 MR. McGLYNN: I'm sorry?</p> <p>14 A. Blue Hills Office Park.</p> <p>15 Q. What letter had you obtained from Blue</p> <p>16 Hills Office Park?</p> <p>17 A. It was a letter which bore Joe Warshaw's</p> <p>18 signature, I believe. And it was a letter which was</p> <p>19 very consistent with the scores of transactions I</p> <p>20 had had previously with Lennar. It talked about</p> <p>21 wanting to have, looking forward to meeting and</p> <p>22 discussing the transaction, the status of the loan,</p> <p>23 and asked for the borrower's consent that those</p> <p>24 discussions or negotiations would not be construed</p>
<p style="text-align: right;">103</p> <p>1 is to consult and provide advice with respect to</p> <p>2 available sources of capital. I do that. I am a</p> <p>3 lawyer. And I get paid for that, in spite of the</p> <p>4 fact that I'm a lawyer. It is not not acting as a</p> <p>5 lawyer. That's part of what my function is. That</p> <p>6 could have been misconstrued as being two people,</p> <p>7 but that's part of what I do as counsel.</p> <p>8 Q. Did you give Mr. Warshaw Joe Donovan's</p> <p>9 name, title and telephone number?</p> <p>10 A. No.</p> <p>11 Q. Did you discuss the prenegotiation letter</p> <p>12 with Mr. Warshaw in that first conversation?</p> <p>13 A. No.</p> <p>14 Q. Did you tell Mr. --</p> <p>15 A. I didn't have it yet.</p> <p>16 Q. Did you tell Mr. Warshaw that you would be</p> <p>17 meeting with Mr. Fineberg the next day and would get</p> <p>18 back to him?</p> <p>19 A. No.</p> <p>20 Q. When was the next conversation that you had</p> <p>21 with Mr. Warshaw?</p> <p>22 A. It was probably seven to ten days later.</p> <p>23 Q. What date was that?</p> <p>24 A. I don't know. It was probably seven to ten</p>	<p style="text-align: right;">105</p> <p>1 as an agreement unless and until a document were</p> <p>2 executed by the parties.</p> <p>3 I remember the famous thing by a lawyer</p> <p>4 calling it a green, green letter. That it was to</p> <p>5 promote a full -- green, green. We are going to be</p> <p>6 able to go and sit and meet and have full and</p> <p>7 productive discussions, but it was not going to be</p> <p>8 binding until a deal were reached or not reached.</p> <p>9 Q. Are you talking about the prenegotiation</p> <p>10 letter?</p> <p>11 A. Yes, it was the letter. That was, you</p> <p>12 know, I don't know if it was part of one letter or</p> <p>13 it came with a cover letter saying we were going to</p> <p>14 meet, but in order to do that we were going to</p> <p>15 discuss this thing, and in order to do that you have</p> <p>16 got to consent to the following. I told him I was</p> <p>17 going to see Gerry the next day.</p> <p>18 Q. I haven't asked you about the conversation</p> <p>19 yet.</p> <p>20 A. I'm sorry, I thought you did. I thought</p> <p>21 that's what you asked me about. That's all right.</p> <p>22 Q. That's okay.</p> <p>23 MR. McGLYNN: Is this a good time?</p> <p>24 MR. FALBY: Why don't I finish.</p>

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<p style="text-align: right;">106</p> <p>1 Q. Why don't you tell me what he said to you 2 and you said to him during the second call that you 3 had with Mr. Warshaw. 4 A. I believe it was I who called him. As I 5 just indicated, it was responsive to that letter, 6 which I think was dated in the middle of the month, 7 somewhere around the 19th or 20th of August. I 8 thought I answered the question already. It was 9 over his signature, is my memory. It talked 10 about -- I said we were looking forward to meeting. 11 I'm going to be with Gerry the next day. And it 12 looked like the same, as I said to you, the format 13 that I had utilized in dealing with Chris Brown in 14 literally scores of other transactions with Lennar; 15 that I told him I would get it signed the next day 16 and get it back to him. 17 We talked a little bit more about the 18 property. I said this is where I'm not sure whether 19 the discussion of the specific capital needs. I 20 told him I was glad he was getting going on it. I 21 asked him whether he was able to confirm whether 22 there was the kinds of reserves there, that in fact 23 it was not a default for the lessee to leave. He 24 said he had not had a chance to review with any more</p>	<p style="text-align: right;">108</p> <p>1 were on board. The borrower had a good relationship 2 with who we thought was going to be and had been a 3 very good lease broker. And we were generally 4 hopeful and optimistic that we would be able to make 5 it work. 6 I think his response was that he needed 7 a little bit more time. The boxes had just gotten 8 there with the information and he would get back to 9 me. I asked him whether or not it was possible 10 to -- that's when we talked about whether it was 11 possible to get him up to Boston before Labor Day. 12 He said he didn't think so but he said he would get 13 back to me if he could. That was the essence of the 14 conversation. 15 Q. Did you tell him where the \$5 million was 16 going to come from? 17 A. I think the discussion was simply that we 18 thought it was a 5 to \$10 million turnaround. And 19 that once again, we could -- both with the means of 20 the owners, their means and my experience in the -- 21 not that that's what we were talking about -- that 22 my experience in the capital markets, that I did not 23 believe, given this property, that that would be 24 difficult to raise, arrange or to access.</p>
<p style="text-align: right;">107</p> <p>1 specifics, the loan documents, but he did know that 2 there was a lot of money in the account. He was 3 fully apprised of that. 4 I at the time talked about it would be 5 enormously helpful because we were facing -- I 6 remember this -- Labor Day. I told him if it would 7 expedite things so that it would not lose time, we 8 would fund his coming to Boston to look at the 9 market; that I didn't want the meeting, as I had 10 several times previously gone to Atlanta or Miami to 11 meet with Lennar, that I would want him to come up 12 here and look at the market to show him why we were 13 enthusiastic about the property. Told him once 14 again that the client was very committed to the 15 property and really did want to, was very -- wanted 16 to make it work. 17 The tenant was leaving. We acknowledged 18 that. This was going to take real effort. I think 19 it was at that time in that second call that we 20 mentioned, to give him some comfort, that we thought 21 it was going to be a 5 to \$10 million turnaround. 22 There were all sorts of questions on how do you 23 address it, how to best attract tenants. I told him 24 to please make sure that he was comfortable that we</p>	<p style="text-align: right;">109</p> <p>1 Q. Was it during the second conversation that 2 you told him there were potentially a number of 3 different avenues to bring in new money? 4 A. I believe it was during that discussion. 5 That's why I said to him we have got to get you up 6 here. There were a series of options that we had to 7 get some feedback from him on, like bringing in 8 tenants who you would give a piece of the ownership 9 to. But all of those kinds of things were 10 precluded. What changes we would need to make to 11 the property physically. We would need to do that, 12 et cetera. My job was to make it clear to him that 13 my client wanted the property. Those were my 14 instructions and we intended to do what was 15 necessary to make it happen. 16 Q. Did you tell Mr. Warshaw during the second 17 conversation that the borrower had, in fact, 5 to \$6 18 million set aside available to develop the property? 19 A. I'm not sure they would have dedicated 5 or 20 \$6 million. I'm not sure that they wouldn't have. 21 I think it all depended upon the time parameters and 22 responses of the lender. I just tried to explain 23 that there was the means available based on my 24 experience, and the general means of the client.</p>

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<p style="text-align: right;">110</p> <p>1 Q. I'm just trying to understand what you told 2 him. You said you told him that you had a 3 well-heeled client with means? 4 A. Yes. 5 Q. Did you tell him that the borrower had, in 6 fact, set aside substantial monies that were 7 available? 8 A. No. I think what I did say to him was that 9 I asked him whether he was aware from Chris Brown of 10 the client's means. I had just come through a 11 series of transactions with Mr. Brown, where he 12 solicited proposals on what Mr. Fineberg, in that 13 case, was prepared to pay to reacquire the property 14 if he was interested and whether or not that would 15 have to be conditioned upon getting financing. In 16 those transactions we made it clear that he was 17 capable of writing a check. They would not be 18 conditioned upon getting third-party financing. 19 Q. How big were those transactions? 20 A. They were certainly more than the kind of 21 additional equity that would been required for this 22 transaction. 23 Q. I know the Sturbridge loan was 16 and a 24 half million dollars. Could he write a check for 16</p>	<p style="text-align: right;">112</p> <p>1 Q. What was the dollar amount of those 2 potential acquisitions? That's my question. 3 A. It was substantial. 4 Q. How big, what number? 5 A. I don't recall. 6 Q. Was it more than \$10 million? 7 A. The answer is, at least one or more of them 8 was more than \$10 million. And he had sources of 9 capital himself and/or with his lenders who would 10 make those funds available on a routine basis. 11 Q. Did you have such sources available to do a 12 transaction of \$20 million or more? 13 A. You would have to ask Mr. Fineberg that. 14 If I have that information -- 15 Q. I'm asking you -- 16 A. Let me answer your question. If I have 17 that information, it is as a result of my acting as 18 Mr. Fineberg's attorney. I think it is an 19 inappropriate question. It is privileged. 20 Q. I'm following up on your question how he 21 could make offers on these other Chris Brown deals 22 not conditioned on third-party financing. I'm 23 trying to understand what amounts you were talking 24 about. You said it was more than 10 million. Was</p>
<p style="text-align: right;">111</p> <p>1 and a half million dollars? 2 A. I don't think we are talking about writing 3 a check. I don't think that's an appropriate 4 question of how much money my client had. That's 5 knowledge that I would obtain. I don't think that 6 it is appropriate to respond. 7 Q. You just talked about it in your previous 8 answer. 9 A. I said he was a man of substantial means 10 and a man capable of handling and funding the 11 equity. The best proof of that is, as you just 12 indicated, that they had 5 or \$6 million in cash. 13 Q. You just said on the other deals -- 14 THE WITNESS: I said what I said. 15 MR. McGLYNN: Do not argue, gentlemen. 16 MR. FALBY: I'm not arguing. 17 Q. You just said, sir -- 18 A. I said what I said. We can look at it. 19 Q. -- on the other deals that you had done, 20 there had been a discussion of Mr. Fineberg 21 acquiring properties without the acquisition being 22 conditioned on getting third-party financing. 23 A. That is correct, without it being a 24 condition precedent to closing.</p>	<p style="text-align: right;">113</p> <p>1 it more than 20 million? 2 A. I don't recall. 3 Q. Was it more than 15 million? 4 A. I don't know. What is the point of 5 grinding away here? The point of the matter is that 6 we were talking about a 5 to \$10 million 7 transaction. You are trying to pervert my answer. 8 You don't have to laugh at me. Your demeanor is 9 very unprofessional. 10 Q. I'm just smiling, not laughing. 11 A. You have got this giggling demeanor to try 12 to make fun of what I'm saying. I'm trying to be as 13 fully responsive as possible. We were talking about 14 the frame of reference of 5 or \$10 million to turn a 15 property around. You are now asking me about 20, 16 30. It is not relevant. 17 Q. It is. 18 A. I don't need your testimony on the record. 19 Q. You told me that to show Mr. Warshaw just 20 what means Mr. Fineberg had that you talked about 21 the fact that on prior dealings with Mr. Brown he 22 had been prepared to acquire property without a 23 financing condition. 24 A. I did not say that, sir. What I said was</p>

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<p>114</p> <p>1 that I'm presuming that since I knew that Chris 2 Brown had been in contact with and talked about this 3 matter that he was aware generally -- this was 4 responsive to the request you made, did I tell him 5 that they had \$5 million. I said I presumed that as 6 a result of his discussion with Chris Brown that in 7 fact he was aware that Mr. Fineberg was in fact a 8 man of means and this kind of money, which was in 9 the range of 5 or \$10 million, half of which was 10 going to be there, and that Mr. Fineberg had 11 contacts and means himself such that he did not have 12 to make his commitments conditioned upon his getting 13 third-party financing. That doesn't mean he's going 14 to write a check or not write a check. Let's not 15 make more of it than it is. I have been careful 16 with my answer.</p> <p>17 Q. I'm trying to get your best memory of what 18 the amount of those transactions was that he could 19 do without getting third-party financing.</p> <p>20 A. Why?</p> <p>21 Q. You said 10 million or more. I'm trying to 22 figure out whether you have a better memory than 23 that, whether it was 15 million or more or 20 24 million or more. These are perfectly proper</p>	<p>116</p> <p>1 A. The transactions that we discussed with 2 Chris Brown wherein Mr. Fineberg would provide 3 funding or would have available financing, we had 4 sources of financing, were greater than \$10 million.</p> <p>5 Q. Were they greater than \$15 million?</p> <p>6 A. I don't know the answer that related to my 7 transactions. Again, we are talking about what 8 commitment we had made to Chris Brown in other 9 transactions.</p> <p>10 Q. That is all I'm asking.</p> <p>11 A. The range is more than \$10 million. I 12 don't remember any more specifically than that.</p> <p>13 MR. McGLYNN: We are going to break for 14 lunch.</p> <p>15 16 17 (A luncheon recess was taken.) 18 AFTERNOON SESSION</p> <p>19 Q. Did Mr. Fineberg actually end up putting 20 any money into Sturbridge after the borrower went 21 into default?</p> <p>22 A. I don't know. I have no way of knowing.</p> <p>23 Q. Did Mr. Fineberg give back the keys to the</p>
<p>115</p> <p>1 questions.</p> <p>2 A. Are we talking about the discussions that I 3 had with Joe Warshaw and what means, whether I did 4 or did not tell him that Mr. Fineberg had the means 5 specifically, specifically had that money set aside? 6 Wasn't that the frame of reference?</p> <p>7 Q. I asked you about conversations with 8 Mr. Warshaw. You went off of what Mr. Warshaw must 9 have known because of dealings you had with 10 Chris Brown. You talked about particular offers 11 that Mr. Fineberg had made with respect to dealings 12 with Chris Brown where he considered buying 13 properties without the need of a financing 14 condition. I'm asking you what were the dollar 15 amounts of those potential transactions that 16 Mr. Fineberg could accomplish without needing 17 financing?</p> <p>18 MR. McGLYNN: Objection. That question 19 is asked and answered. If you have any last answer, 20 then we are going to break for lunch.</p> <p>21 A. I don't know.</p> <p>22 Q. You told me that the transactions were 10 23 million or more. Is that the best memory that you 24 have?</p>	<p>117</p> <p>1 Sturbridge Hotel and walk away?</p> <p>2 MR. McGLYNN: Objection as to the form. 3 You can answer.</p> <p>4 A. Yes, ultimately.</p> <p>5 Q. Similarly with the Lancaster Hotel, he gave 6 back the keys and walked away?</p> <p>7 A. Mm-hmm, yes.</p> <p>8 Q. With either one of those deals, did he 9 actually put any money into the property in an 10 attempt to do a workout with the lender?</p> <p>11 A. Let me answer that and say that I would 12 have to guess that Mr. Fineberg funded losses in 13 operations to stave off a default in Sturbridge and 14 Lancaster that totalled a seven-figure amount. 15 After there was insufficient cash flow, he put in 16 hundreds of thousands of dollars in both properties.</p> <p>17 Q. Is it not the case that with respect to 18 Sturbridge, the Sturbridge Host Hotel went into 19 default of its debt service in October 2003 and 20 thereafter paid no debt service?</p> <p>21 A. Yes, except for the prior year there was 22 insufficient cash flow similar to Royall and he put 23 in hundreds of thousands of dollars. So there was 24 substantial capital investment where there hadn't</p>

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<p style="text-align: right;">118</p> <p>1 been for a long time; and perhaps in Sturbridge two</p> <p>2 or three years, I would guess there are millions of</p> <p>3 dollars that he has invested into properties that</p> <p>4 he's, quote, given back to Lennar after the cash</p> <p>5 flow became insufficient to service the debt.</p> <p>6 Q. That wasn't my question. Let me rephrase</p> <p>7 it to be clear.</p> <p>8 After the borrower on the Sturbridge</p> <p>9 Hotel went into default and stopped making loan</p> <p>10 payments, Mr. Fineberg did not put any additional</p> <p>11 money into the property, did he?</p> <p>12 A. Not any additional money, that is correct.</p> <p>13 Q. Similarly, with respect to Lancaster, after</p> <p>14 the borrower went into default, Mr. Fineberg did not</p> <p>15 put any money into that property, correct?</p> <p>16 A. Any additional money into that property,</p> <p>17 yes, sir.</p> <p>18 Q. By additional, you mean in addition to the</p> <p>19 money that he put into the property before the</p> <p>20 default, correct?</p> <p>21 A. Sufficient to make debt service payments</p> <p>22 for a lengthy period of time, yes.</p> <p>23 Q. I'm referring to the period after debt</p> <p>24 service payments stopped. Are you with me?</p>	<p style="text-align: right;">120</p> <p>1 A. He had already been in touch with him, I</p> <p>2 think. That was the contact person from the</p> <p>3 servicer that came over with the information.</p> <p>4 That's who he corresponded with as well.</p> <p>5 Q. Do you yourself know whether Mr. Donovan</p> <p>6 actually ever spoke to Mr. Warshaw?</p> <p>7 A. No, I don't.</p> <p>8 Q. Did you tell Mr. Warshaw during that second</p> <p>9 conversation that after you met with Gerry the next</p> <p>10 day you would get back to him?</p> <p>11 MR. McGLYNN: Objection.</p> <p>12 A. I said that we would -- I was meeting with</p> <p>13 Gerry the next day and would get the prenegotiation</p> <p>14 letter signed and then I would get back to him.</p> <p>15 Q. Did you subsequently have any other</p> <p>16 conversations with Mr. Warshaw?</p> <p>17 A. I believe I did not. I'm not sure how I</p> <p>18 learned that he, that the file had been assigned</p> <p>19 from him. I don't know. I don't recall. I think</p> <p>20 the answer is no, I did not get any subsequent</p> <p>21 telephone call.</p> <p>22 Q. Well, I think you said you left the second</p> <p>23 call that you would get back to him. Did you at</p> <p>24 some point try to get back to him?</p>
<p style="text-align: right;">119</p> <p>1 A. Not by choice.</p> <p>2 Q. After Lancaster --</p> <p>3 A. Yes, he did not put additional money.</p> <p>4 Q. Instead he gave back the keys and walked</p> <p>5 way, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Before lunch, did you tell me everything</p> <p>8 that you said to Mr. Warshaw and he said to you</p> <p>9 during the second conversation that you had with him</p> <p>10 which you placed at the end of August 2004?</p> <p>11 A. As I said to you, I'm not quite sure.</p> <p>12 There's a bit of a merger in my mind. I had a</p> <p>13 couple of calls. There may have been a third. I</p> <p>14 think there were two telephone calls. One of them</p> <p>15 was a little bit shorter than the other. Certainly</p> <p>16 if I could -- the sum and substance of what I told</p> <p>17 you with respect to both calls were had during the</p> <p>18 first and/or second telephone call, yes, sir, in</p> <p>19 their entirety.</p> <p>20 Q. During the second telephone call at the end</p> <p>21 of August, did you give Mr. Warshaw Joe Donovan's</p> <p>22 name, title and phone number?</p> <p>23 A. He already had it, sir.</p> <p>24 Q. How did he already have it, do you know?</p>	<p style="text-align: right;">121</p> <p>1 A. No.</p> <p>2 Q. Why not?</p> <p>3 A. My memory is, I could be wrong. It could</p> <p>4 have been he that called me to tell me that.</p> <p>5 Sitting here today, I don't believe that's what</p> <p>6 happened. I believe that somebody from Lennar, I</p> <p>7 was advised that somebody from Lennar told me that</p> <p>8 Mr. Warshaw was no longer on the case and there</p> <p>9 would be somebody new assigned and that we would be</p> <p>10 hearing from somebody, quote, new.</p> <p>11 Q. Did you yourself ever have any conversation</p> <p>12 with the new asset manager who was assigned to this</p> <p>13 loan after Mr. Warshaw?</p> <p>14 A. I believe a brief telephone call, yes.</p> <p>15 Q. And who was that with?</p> <p>16 A. I believe Mr. Polcari.</p> <p>17 Q. When did you talk to Mr. Polcari?</p> <p>18 A. Again, I hope I'm not stretching. But I do</p> <p>19 believe that there was a brief telephone call. I</p> <p>20 just don't recall. I don't recall sufficiently that</p> <p>21 call. I don't want to speculate, sir.</p> <p>22 Q. Does that mean you think you may have</p> <p>23 talked to Mr. Polcari but you really can't remember?</p> <p>24 A. I think I may have talked to Mr. Polcari.</p>

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<p style="text-align: right;">122</p> <p>1 But my memory, sitting here today, is that it was so 2 brief that it was -- I don't even remember if his 3 name was Joe Polcari and I'm getting confused with 4 subsequent discussions that I had with him in 5 connection with our mediation. I think it was -- 6 the answer is I don't remember, sitting here of my 7 own memory, that he and I talked, other than in 8 mediation subsequently.</p> <p>9 Q. Mr. Warshaw has notes of a conversation 10 with you on September 7, 2004.</p> <p>11 A. Mm-hmm.</p> <p>12 Q. Do you recall talking to Mr. Warshaw on or 13 about September 7, 2004?</p> <p>14 A. That could have been then, as I said 15 before, a third telephone call that I had with him. 16 I remember I talked to him at least twice. It could 17 have been three times.</p> <p>18 Q. Was the substance of your conversations 19 with Mr. Warshaw that you told me about this morning 20 meant to reflect the entirety of your conversation 21 with him, whether they took place during two calls 22 or three?</p> <p>23 A. Yes. That is what I thought I said. I 24 just wasn't sure where the demarcation between one</p>	<p style="text-align: right;">124</p> <p>1 look at the loan documents again?</p> <p>2 A. That's a little confounding. It was very 3 clear from the questions that I was putting to him 4 that he had not had an opportunity yet to review the 5 loan documents. It was we who were looking forward 6 to accessing reserve accounts about which he did not 7 know about in the first call and in the second call 8 he realized there was. He did not, nor did he have 9 the time to review -- it is an inconsistent position 10 to take.</p> <p>11 He did not know enough about it. The 12 only discussion, as I reflected before, that we had 13 was whether or not the tenant leaving might have 14 been a default. He raised that. I said no, no, 15 that's not the deal. I said we set aside some of 16 the money for debt service payments. He said: I 17 can look at the loan documents.</p> <p>18 Q. Do you recall any discussion with 19 Mr. Warshaw about the failure of the borrower to pay 20 real estate taxes at the beginning of August?</p> <p>21 A. There was no discussion about that. That's 22 just....</p> <p>23 Q. I appreciate that you can't remember 24 whether you had two or three conversations with</p>
<p style="text-align: right;">123</p> <p>1 and the other would be.</p> <p>2 Q. In any of your conversations with 3 Mr. Warshaw, did you request of him that the 4 borrower have access to the reserve accounts to pay 5 debt service?</p> <p>6 A. I think in the first telephone call there 7 was mention of, as I indicated, the various reserve 8 accounts and that we intended to access them. But 9 because the debt service account was quantifiable, 10 was a small amount, it was one of the reasons that 11 we needed to get the discussions going. Once again, 12 he said he didn't know what they were or didn't have 13 the documents. There was certainly a discussion 14 about reserves. It didn't go anywhere because it 15 was too early in his process, he said.</p> <p>16 Q. Do you recall in your final conversation 17 with Mr. Warshaw that he told you that based on his 18 review of the file there were defaults under the 19 loan and that the borrower would not be eligible to 20 draw on the reserves as long as the loan was in 21 default?</p> <p>22 A. No, that didn't happen.</p> <p>23 Q. And do you recall that you responded that 24 the loan was not in default and that he had better</p>	<p style="text-align: right;">125</p> <p>1 Mr. Warshaw. Can you tell me, how did your last 2 conversation with Mr. Warshaw end, whether it was 3 your second or third call? I think you told me that 4 your second call ended that you would get back to 5 him. Do you have any further memory beyond that?</p> <p>6 MR. McGLYNN: I'm going to object. Can 7 you break that down, Bruce? I found it really hard 8 to follow.</p> <p>9 MR. FALBY: Sure.</p> <p>10 MR. McGLYNN: Thank you.</p> <p>11 Q. Is the last thing that you remember saying 12 to Mr. Warshaw the statement that you testified to 13 that at the end of the second call you said you 14 would be getting back to him?</p> <p>15 A. I think that's not what I said. What I 16 said was I was going to see Gerry -- during the 17 second call I'm clear that it was then that the 18 subject of this prenegotiation letter had come up 19 and I had a copy of it. I said that I had reviewed 20 it. I had a whole lot of experience with Lennar. I 21 looked at it. It was appropriate. I was going to 22 see Gerry the next day and we were going to sign it. 23 I would sign it and get it out to him.</p> <p>24 I might have said -- I thought what I</p>

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<p style="text-align: right;">126</p> <p>1 said before was that I might have said I will call 2 you back; but I thought it was simply I'll get that 3 back to you. It was the prenegotiation letter that 4 my memory is that the end of that discussion focused 5 on. There might have been another call. 6 Q. Is that the last thing you recall saying to 7 Mr. Warshaw in that conversation? 8 A. In that discussion, yes. 9 Q. Is there any other discussion that you 10 remember ending a different way? 11 A. Yeah. The discussion, whichever was the 12 last discussion, was our proposal, I believe, 13 waiting for him to respond to let us know whether he 14 could come up to Boston either before, hopefully 15 before Labor Day, but as quickly as after possible 16 to have a meeting. I think that option was left -- 17 that was left open for him to become sufficiently -- 18 he didn't have the stuff yet. He had to look at the 19 loan documents. He had to talk to the lawyers to 20 see what these accounts were. There were millions 21 of dollars involved. It was clear we wanted that to 22 be productive. 23 The last thing I remember, therefore, is 24 that simply we were -- I was waiting for him to, for</p>	<p style="text-align: right;">128</p> <p>1 Day. 2 Q. And then what happened next with 3 Mr. Warshaw? 4 MR. McGLYNN: Objection as to the form. 5 Q. With respect to your communications with 6 Mr. Warshaw, did you ever talk to him again? 7 A. I don't think so. I think we covered the 8 full discussions that I have had with him. 9 Q. When and how did you learn that he was no 10 longer the asset manager on this loan? 11 MR. McGLYNN: Objection. 12 You may answer. 13 A. I don't believe it was by call from him. I 14 believe it was somebody who called and told me. I 15 just was advised. 16 Q. Do you remember who? 17 A. Yes, I do. 18 Q. Who? 19 A. I don't want to get into this. I don't 20 want to get into a question of my waiving. I had a 21 call that provided that information generally by my 22 client. 23 Q. Thereafter, did you have any discussion 24 with anybody who worked for Lennar -- I have asked</p>
<p style="text-align: right;">127</p> <p>1 the two of us or somebody to arrange with him that 2 follow-up meeting, which we both had discussed would 3 happen as soon as he was available and had enough 4 knowledge so that that would be productive. That 5 was the end of whatever the last call was. 6 Q. What did he say on that subject? 7 A. Just that he was going to get back to us 8 and let us know when he would come up or if he was 9 coming up or whether the meeting was down there. 10 Before we met, he had to get sufficiently familiar 11 with the file so that it could be productive. 12 Q. Did you have any discussion with 13 Mr. Warshaw about his reviewing the loan documents 14 with counsel? 15 A. Yes. He said he was going to review 16 documents. He had to go back and become familiar 17 with the documents and review them with counsel. 18 Q. When did he say that? 19 A. Whatever was -- I believe that was -- if I 20 had three calls, it was the second and third calls. 21 Otherwise, it was the second call. 22 Q. If you had three calls, when was the third 23 call? 24 A. I think it was just before or after Labor</p>	<p style="text-align: right;">129</p> <p>1 you about Joe Polcari, but did you talk to anybody 2 else from Lennar after that about Blue Hills Office 3 Park? 4 MR. McGLYNN: Other than Mr. Warshaw and 5 Mr. Polcari? 6 MR. FALBY: I think so. 7 Q. Let me make sure you know what I'm asking. 8 I think you've now told me everything that you can 9 remember about the two or three conversations that 10 you had with Mr. Warshaw, right? 11 A. Yes. 12 Q. The last of which took place either right 13 before or right after Labor Day of 2004, correct? 14 A. That's my recollection, yes, sir. 15 Q. You already told me you don't have any 16 recollection of ever talking to Mr. Polcari, at 17 least prior to the loan foreclosure, correct? 18 A. No, that's not what I said. I said I don't 19 have any present memory. I may have had a brief 20 discussion with him. But I'm not sufficiently sure 21 to say that I did or did not. 22 Q. Okay. I thought you ended up saying that 23 you have no recollection of any discussion. 24 A. I'm not sufficiently sure to go one way or</p>

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<p style="text-align: right;">166</p> <p>1 agreement, not Exhibit 177, but based on the</p> <p>2 settlement agreement you can tell me that the</p> <p>3 account referenced on the first page of Exhibit 177</p> <p>4 is actually in the name of Blue Hills Office Park</p> <p>5 LLC?</p> <p>6 MR. McGLYNN: Objection.</p> <p>7 A. I told you five times that I don't know in</p> <p>8 what name it is. It could be Bernkopf Goodman &</p> <p>9 Baseman, clients funds, which I believe it is. I</p> <p>10 can't give you the exact name. I know it is not</p> <p>11 Royall Associates. I know it is not Gerald Fineberg</p> <p>12 nor Kenneth Goldberg nor Bruce Falby.</p> <p>13 Q. You seem to know it is Blue Hills Office</p> <p>14 Park LLC?</p> <p>15 A. No. Once again, asking me the same</p> <p>16 question 15 times won't change it. I don't have the</p> <p>17 account record here. It is in a Bernkopf Goodman</p> <p>18 clients funds account, the title of which I don't</p> <p>19 know here. But I know we were accounting for it in</p> <p>20 the same manner and for the same client as it was</p> <p>21 originally received pursuant to the agreement.</p> <p>22 Q. How do you know that?</p> <p>23 A. Because I have an agreement and it is</p> <p>24 signed. It says the payments go to Blue Hills</p>	<p style="text-align: right;">168</p> <p>1 being held, how come you don't know as the escrow</p> <p>2 agent for whose benefit the \$2.2 million is being</p> <p>3 held?</p> <p>4 MR. McGLYNN: Objection.</p> <p>5 A. Because I'm not an accountant. That money</p> <p>6 was not in my jurisdiction or my control from the</p> <p>7 time it was generated.</p> <p>8 Let's make it easy. That money came</p> <p>9 from operations. I think that you have a</p> <p>10 misunderstanding, sir, of, once again, where this</p> <p>11 money came. The money came very clearly, the 2.2</p> <p>12 came from the operation of the property. It was</p> <p>13 from money in the lockbox account that was</p> <p>14 distributed out. The point of the matter is,</p> <p>15 whether or not when it was distributed out and the</p> <p>16 money went into the account and ultimately ended up</p> <p>17 here, did that in the interim get transferred. The</p> <p>18 answer is I wouldn't know. It was not in my care or</p> <p>19 custody simply from the beginning. That money came</p> <p>20 from and it was generated from the tenant to Wells</p> <p>21 Fargo, went through the accounts and distributed to</p> <p>22 BHOP LLC.</p> <p>23 In that process Bernkopf Goodman did not</p> <p>24 have care, custody, control over any of that money.</p>
<p style="text-align: right;">167</p> <p>1 Office Park LLC. And that money went into our IOLTA</p> <p>2 account and went directly in. And it was not -- it</p> <p>3 just went directly from there into that account. It</p> <p>4 stayed the same. It hasn't changed. That's how I</p> <p>5 know.</p> <p>6 Q. How do you know it didn't go from an IOLTA</p> <p>7 account to an account set up for the benefit of</p> <p>8 Royall Associates Realty Trust?</p> <p>9 A. Because I'm the one that had custody of</p> <p>10 that at my office and directed it. I never received</p> <p>11 the direction that it be distributed. It stayed the</p> <p>12 same.</p> <p>13 Q. From whom do you take direction about</p> <p>14 distributing the money of Blue Hills Office Park</p> <p>15 LLC?</p> <p>16 A. It would have to come from money that's in</p> <p>17 escrow from Andrew Cohn and counsel to Fineberg on</p> <p>18 behalf of the owners consenting to a change or all</p> <p>19 of the owners telling me what to do, not one half,</p> <p>20 not the other half. It was a mechanism to assure</p> <p>21 that money stayed for the benefit of the entity</p> <p>22 and/or the parties entitled to it.</p> <p>23 Q. If you are so sure as the escrow agent of</p> <p>24 the \$2 million payment for whose benefit it was</p>	<p style="text-align: right;">169</p> <p>1 We ended up with it in a manner of how to implement</p> <p>2 the disposition of those funds. But from the time</p> <p>3 the money was generated it was out of Bernkopf</p> <p>4 Goodman's control.</p> <p>5 Different: The \$2 million came pursuant</p> <p>6 to an agreement for the benefit of Blue Hills Office</p> <p>7 Park into in fact an account, defined account,</p> <p>8 separate account into our clients funds account and</p> <p>9 has continued to stay there. I have never received</p> <p>10 notice or direction that there's been a distribution</p> <p>11 or change of rights of ownership of that asset,</p> <p>12 period. That's the difference.</p> <p>13 Q. And when did you get the 2.2 million of</p> <p>14 monies that were also in the supplemental account</p> <p>15 held by you as escrow agent?</p> <p>16 A. Sometime prior to December 31st, 2004.</p> <p>17 Q. You don't remember when or how or from</p> <p>18 whom?</p> <p>19 A. Not with enough specificity. It came from</p> <p>20 the operating accounts. I don't know the answer to</p> <p>21 that.</p> <p>22 Q. Do you have any written memorialization in</p> <p>23 any form of any of your conversations with Joe</p> <p>24 Warshaw, contemporaneous, I mean?</p>

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Kenneth Goldberg, April 7, 2006

<p>170</p> <p>1 A. No.</p> <p>2 Q. Your answer to who now controls the \$2</p> <p>3 million sitting in two separate accounts, one at</p> <p>4 Bernkopf and one at Wilmer Hale, is that it is</p> <p>5 subject to the December 31, 2004 agreement?</p> <p>6 A. Yes. I don't know that there's been any</p> <p>7 agreement -- sitting here I don't recall that</p> <p>8 there's been an agreement modifying it.</p> <p>9 Q. What's the fourth page of Exhibit 177?</p> <p>10 A. It just appears to be an acknowledgement of</p> <p>11 the transfer from -- I just think this relates to</p> <p>12 this account, the money was transferred, that we</p> <p>13 were holding a million dollars to Danvers Bank</p> <p>14 because there was a greater rate of interest there.</p> <p>15 Q. Did it get then transferred back to Century</p> <p>16 Bank?</p> <p>17 A. I don't think so. I can't answer. This is</p> <p>18 a process question. We may have wired into a</p> <p>19 Bernkopf account at Danvers from which they open a</p> <p>20 subaccount. I think that's the process that this</p> <p>21 bank does. You have some posting of interest. I</p> <p>22 think what it looks like happened, if I had to</p> <p>23 guess, for a short period of time there was some</p> <p>24 interest earned and it got posted later and opened</p>	<p>172</p> <p>1 On Page 14, the last line it says: "The intrabank</p> <p>2 transfer referenced in these documents between</p> <p>3 Century Bank and Danvers Bank was unrelated to the</p> <p>4 payment."</p> <p>5 Do you have any idea what that means?</p> <p>6 A. I have to go back and reread -- how do I</p> <p>7 find the question? Here it is.</p> <p>8 MR. FALBY: Did you just write him a</p> <p>9 note, Peter?</p> <p>10 MR. McGLYNN: No.</p> <p>11 MR. FALBY: It sure looked like it.</p> <p>12 MR. McGLYNN: I'm making notes to</p> <p>13 myself. If you want to take a look, I've made all</p> <p>14 sorts of notes on all these documents, including</p> <p>15 this. If you would like, if you want to go off the</p> <p>16 record I'll provide an explanation for that.</p> <p>17 MR. FALBY: I'm not interested. I would</p> <p>18 like to hear Mr. Goldberg's explanation.</p> <p>19 MR. McGLYNN: I'm not sure Mr. Goldberg</p> <p>20 provided any assistance in preparing these</p> <p>21 documents. He may not know precisely what was</p> <p>22 intended.</p> <p>23 THE WITNESS: I think this is the same.</p> <p>24 A. What am I missing?</p>
<p>171</p> <p>1 into a money market to earn greater interest. I</p> <p>2 think from month to month the kind of accounts that</p> <p>3 pay the higher interest rates changes.</p> <p>4 Q. Is the million dollars of holdback, what</p> <p>5 you say is the settlement payment, now being held at</p> <p>6 Danvers Bank?</p> <p>7 A. I believe that money is still at Danvers</p> <p>8 Bank.</p> <p>9 Q. Transferred there from Century Bank on</p> <p>10 April 5, 2005?</p> <p>11 A. I think so. That certainly appears -- I</p> <p>12 think what happens, if you look at the third page,</p> <p>13 Bruce, not to presume a first-name basis -- I think</p> <p>14 you have to transfer it into a master account from</p> <p>15 which the other is opened. You have got a transfer</p> <p>16 on 4/1 to the Danvers Bank. You have got a</p> <p>17 reference into an account to where it was earning</p> <p>18 money and then a money market account to get a</p> <p>19 higher rate of interest. You can see if you track</p> <p>20 it the exact same amount went from one place to</p> <p>21 another at the Danvers Bank.</p> <p>22 Q. In light of all that, I have to ask you to</p> <p>23 explain the same answer to the interrogatory that I</p> <p>24 showed you earlier that's contained in Exhibit 323.</p>	<p>173</p> <p>1 Q. Your explanation was plausible. I'm</p> <p>2 wondering why it is that we have been told that the</p> <p>3 Danvers Bank transfer has nothing to do with the</p> <p>4 payment.</p> <p>5 A. I'm sorry. The last sentence?</p> <p>6 Q. Yes.</p> <p>7 A. It is wrong. I think it is just wrong. I</p> <p>8 think it is as simple as that.</p> <p>9 Q. That clears that up. Can you read the last</p> <p>10 page of Exhibit 177?</p> <p>11 A. Can I what?</p> <p>12 Q. Read it. Mr. McGlynn is trying to hide its</p> <p>13 contents.</p> <p>14 A. Mr. Falby, that is a terrible thing to say.</p> <p>15 MR. McGLYNN: Objection.</p> <p>16 Q. I said it in jest. It appears to have been</p> <p>17 highlighted. In the copy it is hard to read.</p> <p>18 MR. McGLYNN: I got that from Attorney</p> <p>19 Cohn. This is a Wilmer Cutler account.</p> <p>20 A. The answer is no. Can you? Can you read</p> <p>21 it?</p> <p>22 Q. The answer is no. We are still on the</p> <p>23 record.</p> <p>24 MR. McGLYNN: This came from Attorney</p>

EXHIBIT 7

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1 UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF MASSACHUSETTS

3 --oOo--

4 BLUE HILLS OFFICE PARK, LLC,

5 Plaintiff/Defendant-in-Counterclaim

6 vs.

) Civil Action No.
) 05-CV-10506 (WGY)

7 J.P. MORGAN CHASE BANK, as Trustee for)
 the Registered Holders of Credit)
 8 Suisse First Boston Mortgage Securities)
 Corp., Commercial Mortgage Pass-Through)
 9 Certificates, Series 1999-C1,)

10 Defendant)

11 and CSFB 1999-C1 ROYALL STREET, LLC,)

12 Defendant/Plaintiff-in-Counterclaim)

13 and)

14 WILLIAM LANGELIER and GERALD FINEBERG,)

15 Defendants-in-Counterclaim)

16
 17 DEPOSITION OF WILLIAM J. LANGELIER

18
 19 Friday, March 10, 2006 (Pages 1 - 277)
 20 (Pages 149-151 were marked CONFIDENTIAL)
 21 (Pages 232-276 were marked CONFIDENTIAL)
 22

23 REPORTED BY: CYNTHIA A. PACINI, CSR #6117, RMR, CRR
 24 (03-378689)
 25

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<p style="text-align: right;">Page 38</p> <p>1 A. That I had certainly review capacity, but I</p> <p>2 think Mr. Goldberg took the lead on that.</p> <p>3 Q. Blue Hills Office Park was the first and only</p> <p>4 deal you've ever done with Mr. Fineberg?</p> <p>5 A. Correct.</p> <p>6 Q. I saw reference in the documents to</p> <p>7 investments that you made in conventionally financed</p> <p>8 apartments and office buildings of some \$150 million</p> <p>9 during the years 1983 to 1986; is that accurate?</p> <p>10 MR. McGLYNN: That you saw that?</p> <p>11 MR. FALBY: I'll rephrase the question.</p> <p>12 Q. Did you invest in conventionally financed</p> <p>13 apartments and office buildings from 1983 through 1986</p> <p>14 approximately \$150 million?</p> <p>15 A. I don't know where you got that number;</p> <p>16 however, it -- that might have related to equity</p> <p>17 investments that were not all my money. It was probably</p> <p>18 99 percent third-party high net worth investor money.</p> <p>19 Q. I didn't mean to imply it was your money.</p> <p>20 A. Yeah, but that's entirely possible, yeah.</p> <p>21 Q. And then what have you done since 1999?</p> <p>22 A. Relative to?</p> <p>23 Q. Well, I know in 2001, you co-founded Kipling</p> <p>24 Partners, LLC; correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 40</p> <p>1 MR. FALBY: Q. Which led to that Shawmut</p> <p>2 lawsuit that I've asked you about?</p> <p>3 A. That is correct.</p> <p>4 MR. McGLYNN: Are we going to move on?</p> <p>5 MR. FALBY: I'm getting there.</p> <p>6 MR. McGLYNN: One of these days.</p> <p>7 MR. FALBY: Q. You knew from experience --</p> <p>8 you knew from your experience that the rights of a</p> <p>9 borrower are governed by the loan documents, did you?</p> <p>10 MR. McGLYNN: Objection.</p> <p>11 THE WITNESS: Answer it?</p> <p>12 MR. FALBY: Yeah. He's objecting for the</p> <p>13 record.</p> <p>14 THE WITNESS: Oh, I thought -- see, I'm</p> <p>15 inexperienced at this stuff. I guess that's correct,</p> <p>16 yeah.</p> <p>17 MR. McGLYNN: I don't want you to guess.</p> <p>18 THE WITNESS: Okay. Would you rephrase --</p> <p>19 would you ask me the question again, please, Mr. Falby?</p> <p>20 MR. FALBY: Q. Sure. As of 1999, you knew</p> <p>21 from your experience including your experience with the</p> <p>22 recession of the early '90s that the rights of a</p> <p>23 borrower are governed by the loan documents it enters</p> <p>24 into with its lenders; correct?</p> <p>25 MR. McGLYNN: Objection.</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. And that's a real estate co-investment firm</p> <p>2 focused on income producing properties?</p> <p>3 A. Correct.</p> <p>4 Q. You invest other people's money, but you</p> <p>5 co-invest with them at the same time?</p> <p>6 A. Correct.</p> <p>7 Q. With your partner whose name is?</p> <p>8 A. Richard Hake.</p> <p>9 Q. What did you do from '99 through 2001?</p> <p>10 A. Primarily invested for my own account with --</p> <p>11 and watched over my existing portfolio.</p> <p>12 Q. So as of 1999, you had close to 30 years</p> <p>13 experience in real estate, did you?</p> <p>14 A. That's correct.</p> <p>15 Q. And that encompassed all areas of real estate</p> <p>16 including acquiring, developing, investing, financing</p> <p>17 and disposing of properties?</p> <p>18 A. Pretty much so, yeah.</p> <p>19 Q. And as of 1999, you'd also been through the</p> <p>20 recession of the early '90s?</p> <p>21 A. That's correct.</p> <p>22 Q. Which had given you firsthand experience with</p> <p>23 defaulting on loans from lenders?</p> <p>24 A. Absolutely.</p> <p>25 MR. McGLYNN: Objection.</p>	<p style="text-align: right;">Page 41</p> <p>1 THE WITNESS: I just can't give you a</p> <p>2 yes-or-no answer on that.</p> <p>3 MR. FALBY: Q. Why not?</p> <p>4 MR. McGLYNN: Objection.</p> <p>5 THE WITNESS: Because I believe that there are</p> <p>6 a lot of rights that borrowers have that are not in</p> <p>7 writing in the loan documents.</p> <p>8 MR. McGLYNN: May I interrupt because I know</p> <p>9 he's answered the question.</p> <p>10 Does it make sense to take about a two-minute</p> <p>11 break while your associate over there is opening all</p> <p>12 those boxes? It's a little bit disturbing. About two</p> <p>13 minutes.</p> <p>14 MR. FALBY: It's not disturbing me, but I</p> <p>15 don't care.</p> <p>16 MR. McGLYNN: It's disturbing to me. Actually</p> <p>17 I can't focus in --</p> <p>18 THE WITNESS: Actually I need to take a</p> <p>19 bathroom break if you don't mind.</p> <p>20 MR. FALBY: Okay.</p> <p>21 MR. McGLYNN: Two minutes.</p> <p>22 (Recess taken from 9:56 to 9:59 a.m.)</p> <p>23 MR. FALBY: Q. Back on the record. As of</p> <p>24 1999, Mr. Langelier, is it fair to say that when you</p> <p>25 negotiated a loan with a commercial mortgage lender, you</p>

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<p style="text-align: right;">Page 46</p> <p>1 general partners of Royall Associates -- I think we 2 already went through this -- were you and Mr. Fineberg? 3 A. I believe that's correct. 4 Q. And eventually you each admitted some other 5 general partners with some minority stakes? 6 A. I believe that's correct. 7 Q. And by 1999, you had a mortgage loan with what 8 institution? 9 A. Sanwa Bank. 10 Q. And the maturity of that loan was June 30, 11 1999, was it? 12 A. I don't recall, but it sounds about right. 13 Q. Do you recall that when you went to Credit 14 Suisse to refinance, the maturity of the Sanwa loan had 15 come and gone? 16 A. No. 17 Q. What were the circumstances under which you 18 went to Credit Suisse? 19 A. The loan -- the circumstances were that the 20 tenant extended the lease for five years and post lease 21 extension, we were then likely to be able to put a new 22 loan on the property because the rent had been 23 increased. 24 MR. FALBY: All right. Let me mark as the 25 next exhibit a series of documents, Bates stamped BLUE</p>	<p style="text-align: right;">Page 48</p> <p>1 delinquencies, defaults, foreclosures or deeds in lieu 2 of foreclosure occurring during the previous ten years? 3 A. Right. 4 Q. And your explanation is contained in the 5 second paragraph? 6 A. Right. 7 Q. The last sentence states, "The subject 8 property, Blue Hills Office Park, was never in default 9 or delinquent through the maturity of the note on 10 June 30, 1999." 11 A. Yes. 12 Q. Does that refresh your memory that the Sanwa 13 note matured on June 30, 1999? 14 A. Yes. 15 Q. By the time you went to Credit Suisse, the 16 maturity date on that note had come and gone? 17 A. Yes. 18 Q. And you were, in fact, in default of that loan 19 as of August 30, 1999? 20 MR. McGLYNN: Objection. 21 THE WITNESS: I wasn't aware that we were in 22 default because we might have had extensions from Sanwa, 23 but I wasn't aware of whether we were in default or not. 24 Certainly, at that time, I wouldn't have made that 25 statement had we been in default.</p>
<p style="text-align: right;">Page 47</p> <p>1 HILL 5454 through 5470. 2 (Whereupon, Deposition Exhibit 164 was 3 marked for identification.) 4 MR. FALBY: Q. Do you recognize Exhibit 164 5 as documents you produced in this case from the Blue 6 Hills file? 7 A. Yes. 8 Q. Exhibit 164 contains documents and information 9 that you were providing in connection with the Credit 10 Suisse refinancing? 11 A. That's correct. 12 Q. And the cover letter is from you to Mr. -- 13 strike that. 14 The cover letter is from you to Ms. Kendall 15 Simmons -- 16 A. Correct. 17 Q. -- of the Situs Companies, S-i-t-u-s? 18 A. Correct. 19 Q. And what was the Situs Companies? 20 A. I believe they were a due diligence company 21 hired by Credit Suisse. 22 Q. Can you turn, please, to the page Bates 23 stamped BLUE HILL 5460. 24 A. Yeah. 25 Q. You see this contains an explanation of</p>	<p style="text-align: right;">Page 49</p> <p>1 MR. FALBY: Q. Well, I ask the question 2 because the statement is carefully phrased to say that 3 you were never in default through the maturity of the 4 note on June 30, 1999. 5 Do you see that? 6 MR. McGLYNN: Objection. 7 THE WITNESS: Yes. 8 MR. FALBY: Q. Which caused me to conclude 9 that after the maturity date, you were probably in 10 default. But your testimony is you don't know whether 11 you were or not? 12 A. Yes. 13 Q. On the next page, BLUE HILL 5461. 14 A. Yes. 15 Q. You made various statements here under the 16 penalty of perjury, did you? 17 A. Yes. 18 Q. And among other things, you said, "The 19 undersigned, the borrowing entity, and its related 20 entities, have not been or are not currently a party to 21 any lawsuits other than a slip and fall lawsuit." 22 Do you see that? 23 A. Yes. 24 Q. As of August 30, 1999, in fact, you had in the 25 past been a party to at least one lawsuit with</p>

13 (Pages 46 to 49)

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<p style="text-align: right;">Page 78</p> <p>1 Q. Did you know at the time that the loan was 2 being negotiated that it would be syndicated after the 3 closing? 4 A. No. 5 Q. Did you know -- 6 A. Oh, my apologies. Yes. Given the nature of 7 the conduit loan, I knew that, yes. 8 Q. You knew that Credit Suisse would soon after 9 the loan closed -- 10 A. Correct. 11 Q. -- assign it to a loan pool? 12 A. That's correct. 13 Q. For syndication? 14 A. Correct. Correct. 15 Q. And that Credit Suisse would no longer be 16 involved with the loan after its assignment thereof? 17 A. That is correct. 18 Q. Were you involved in discussions with the 19 building's sole tenant, Equiserve, directed toward 20 trying to get them to stay in the building? 21 MR. McGLYNN: Can we have a time frame, Bruce, 22 please? 23 MR. FALBY: Certainly. In 2002 and 2003. 24 THE WITNESS: I'm going to ask you to please 25 repeat that.</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Correct. 2 Q. Turn back to the loan documents in 1999 with 3 Credit Suisse. 4 A. Sure. 5 Q. Blue Hills Office Park -- at the -- strike 6 that. 7 From the Credit Suisse loan proceeds, Blue 8 Hills Office Park received approximately \$5.2 million; 9 correct? 10 A. Correct. 11 Q. That was the amount left over after Sanwa -- 12 A. Sanwa. 13 Q. -- Sanwa was repaid and various expenses were 14 paid as well? 15 A. Correct. 16 Q. And that \$5.2 million was then distributed, 17 was it, to the beneficiaries of the Royall Associates 18 trust; that is, you and Mr. Fineberg? 19 A. It was partially distributed, and there were 20 other monies set aside in reserve. Voluntary reserves 21 that were not required by the lender. 22 Q. How much money -- strike that. 23 What amount of the loan proceeds did you 24 receive? In other words, what amount was distributed to 25 you?</p>
<p style="text-align: right;">Page 79</p> <p>1 MR. FALBY: Q. Sure. You've told us already 2 that Equiserve's lease was going to run out on July 31, 3 2004; correct? 4 A. Correct. 5 Q. And Equiserve was the only tenant in the 6 building? 7 A. Correct. 8 Q. And obviously if you could get them to stay, 9 that's what you would like to do? 10 A. Correct. 11 Q. And efforts were made that Mr. Frank told me 12 about to try to get them to stay either by selling them 13 the building or by extending their lease? 14 A. Correct. 15 Q. Were you involved in those efforts? 16 A. Brief discussions -- general discussions with 17 Mr. Frank as to what he was doing, mostly after the 18 fact. You know, we're going to try to sell the building 19 to Equiserve. Let's see what we could do. And then 20 meetings happened and then he would report back to me 21 with how the meeting went, in general terms. Very 22 general terms. 23 Q. Did you ever meet with Equiserve yourself? 24 A. No. 25 Q. This was all related to you by Mr. Frank?</p>	<p style="text-align: right;">Page 81</p> <p>1 A. About approximately \$2 million. I believe 2 that's the right number. In that range. And we 3 reserved approximately a million dollars as well. Rainy 4 day reserve, shall we say. 5 Q. Blue Hills Office Park, LLC, was formed in 6 connection with the loan closing to be the new owner of 7 Blue Hills Office Park; correct? 8 A. The LLC, that's correct, yeah. We were 9 modernizing the documentation. 10 Q. And Royall Associates Realty Trust, which had 11 owned the office park up to that point, deeded the 12 property to the new LLC? 13 A. I believe that's what we did. 14 Q. And the Royall Associates Realty Trust became 15 the sole member of the LLC? 16 A. I believe that's right. 17 Q. And to meet a requirement of the bank, an 18 additional trustee of the realty trust was appointed? 19 A. I believe I recall that happening as well. 20 Q. And that was Blue Hills Management Corp.? 21 A. I believe that's right. 22 Q. And that management corp. had to have a single 23 independent director, did it? 24 A. I believe that's right. 25 Q. And that became Susan Daly?</p>

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1 Obviously, you're a 50 percent joint venture
2 partner in this deal; right?
3 A. Right.
4 Q. You've got your joint venture partner running
5 it day-to-day?
6 A. Correct.
7 Q. You're not keeping up on the day-to-day
8 details; that's their job?
9 A. Correct.
10 Q. But you obviously have an interest in the
11 property; right?
12 A. Correct.
13 Q. So it seems to me you'd want to be involved in
14 major decisions.
15 A. Correct.
16 Q. And I'm just curious how that came about, the
17 mechanics of that.
18 Did Mr. Frank know to consult you? Was there
19 ever any discussion about it, or did it just kind of
20 happen?
21 MR. McGLYNN: Objection. You want to break
22 that up maybe a little bit, Bruce?
23 MR. FALBY: I think he understands my
24 question.
25 Q. You want me to rephrase it, or do you know

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1 what I'm asking?
2 MR. McGLYNN: You have the right at any time
3 to ask that the question be repeated, Bill.
4 THE WITNESS: If you could narrow that
5 question down a little bit. My problem is it's so
6 general. I'd appreciate it.
7 MR. FALBY: Q. Well, you wanted to be
8 involved in major decisions; correct?
9 A. Yes.
10 Q. Did you tell Mr. Frank that?
11 A. No.
12 Q. Did you understand that Mr. Frank knew that?
13 A. No. It was an unwritten -- it was an
14 unwritten style. I mean, if we're partners, I don't
15 have to remind him verbally that I have to be involved.
16 It's a courtesy that's extended on both sides of the
17 joint venture.
18 Q. Another way of saying, is that it's obvious
19 that --
20 A. Well said.
21 Q. -- one joint venture partner is going to
22 consult with the other on major decisions affecting the
23 property?
24 A. That's right.
25 Q. And your communications were with Mr. Frank

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1 rather than your true joint venture partner,
2 Mr. Fineberg, because you were no longer talking to him;
3 correct?
4 MR. McGLYNN: Objection.
5 THE WITNESS: That's not the real reason.
6 MR. FALBY: Q. What was the real reason?
7 A. It was just easier because Dan was more
8 accessible than Jerry. Jerry was a busy -- and is a
9 very busy man.
10 Q. Did you ever attempt to talk to Jerry Fineberg
11 about any decisions facing Blue Hills Office Park at any
12 point after the Credit Suisse refinancing?
13 A. No.
14 Q. In any event, you were in agreement with the
15 proposal that Mr. Frank made in Exhibit 168?
16 A. I was fundamentally in agreement with it,
17 that's correct.
18 Q. And Mr. Frank sent out the proposal only after
19 consulting with you?
20 MR. McGLYNN: Objection.
21 THE WITNESS: He sent the proposal out only
22 after discussing in concept what he was going to
23 propose, but not the specifics of this letter, I don't
24 believe. I don't recall seeing this letter before it
25 went out, but I don't think I did.

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1 MR. FALBY: Q. When you saw the letter after
2 it went out, was there anything in the letter that was
3 inconsistent with your discussion with Mr. Frank?
4 A. No.
5 Q. Mr. Frank subsequently informed you that
6 Equiserve had declined the proposal contained in
7 Exhibit 168?
8 A. I believe that is correct, and I believe there
9 was a letter from Equiserve to that effect.
10 MR. FALBY: Can we have the volume with
11 Exhibit 38 in it?
12 MR. McGLYNN: Would you like him to turn to
13 Exhibit 38?
14 MR. FALBY: I sure would.
15 MR. McGLYNN: And here it is.
16 MR. FALBY: Q. I'm showing you Exhibit 38,
17 which is an e-mail in which Equiserve informed Fineberg
18 Management that it was not interested in purchasing Blue
19 Hills Office Park.
20 Do you know whether you saw this e-mail at the
21 time?
22 A. I just can't recall. I may have. I just
23 can't recall.
24 Q. In any event, you learned from Mr. Frank
25 through some means --

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<p style="text-align: right;">Page 106</p> <p>1 the special permit application. Have you ever seen that 2 before? 3 A. No. 4 Q. At some point, did somebody at Fineberg 5 Management tell you that Equiserve was planning on 6 moving next door to 250 Royall Street? 7 MR. McGLYNN: Somebody from Fineberg 8 Management, Bruce? I'm not sure I heard you correctly. 9 MR. FALBY: Q. At some point, did you learn 10 from Fineberg Management that Equiserve was planning to 11 move next door to 250 Royall Street? 12 A. Yes. 13 Q. When did you learn that? 14 A. I don't recall. 15 Q. Did you learn that Equiserve or a related 16 entity had entered into a purchase and sale agreement to 17 buy 250 Royall Street? 18 A. Yes. 19 Q. And did you learn that that purchase and sale 20 agreement was conditioned on -- 21 A. Yes. 22 Q. -- the grant of a special permit to build a 23 parking garage? 24 A. Yes. 25 Q. Who were you talking to about this?</p>	<p style="text-align: right;">Page 108</p> <p>1 A. I don't recall. 2 Q. Do you remember anything else that Mr. Frank 3 said to you about the -- 4 A. No. 5 Q. -- subject of the parking garage? 6 A. No. 7 Q. What did you say to him? 8 A. I just don't recall specifically what I said 9 to him. 10 Q. Did you learn from somebody that Blue Hills 11 Office Park appealed a special permit that was granted 12 to Equiserve and National Development to build a parking 13 garage? 14 A. Yes. 15 Q. Before that special appeal -- strike that. 16 Before Blue Hills Office Park filed the 17 special permit appeal, were you consulted? 18 A. Through Andy Cohn. 19 Q. Did you participate in the decision to file 20 the special permit appeal? 21 A. Through discussions with my attorney, Andy 22 Cohn. 23 Q. Who you understood was then talking to Ken 24 Goldberg? 25 A. Correct.</p>
<p style="text-align: right;">Page 107</p> <p>1 A. Andy Cohn was providing me that information 2 via Ken Goldberg. 3 Q. Did you talk to Mr. Frank about the special 4 permit appeal or the purchase and sale agreement or 5 Equiserve's plans to move next door? 6 A. Generally, yes. 7 Q. Can you tell me everything you can recall that 8 you said to Mr. Frank and that he said to you on this 9 subject? 10 A. It's a very general question, catch-all 11 question, that -- I think he just basically told me the 12 facts. 13 They plan to move next door. They want to 14 build a parking garage that will block our view, and 15 that's, you know, pretty much the essence of what we 16 talked about. But here Goldberg and Cohn were in the 17 loop more than I was with Dan. 18 Q. And did Mr. Frank tell you that the parking 19 garage would increase traffic congestion in the 20 neighborhood? 21 A. No. 22 Q. In addition to telling you that the parking 23 garage would block your view, did he say anything about 24 the parking garage interfering with the view of the 25 office park from the highway?</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. Did you talk to Mr. Frank about whether Blue 2 Hills Office Park ought to appeal the special permit? 3 A. No. 4 Q. And what's your understanding of why Blue 5 Hills Office Park appealed the special permit? 6 MR. McGLYNN: And again same instruction as 7 before. If this is information that you obtained from 8 counsel, I'm advising you -- instructing you not to 9 disclose that. If you have an independent 10 understanding, Bill, please feel free to say it now. 11 THE WITNESS: I don't have an independent 12 understanding other than what my discussions with Andy 13 Cohn were. 14 MR. FALBY: Peter, you're instructing him not 15 to answer as to that? 16 MR. McGLYNN: You agreed that you will assume 17 that that instruction was always going to be followed. 18 The answer is I'm instructing him and, yes, the witness 19 will follow, I presume, my instruction. 20 THE WITNESS: Correct. 21 MR. FALBY: Q. Did you talk to anybody else 22 at Fineberg Management about the appeal, whether 23 Mr. Donovan or Mr. Needle? 24 A. No. 25 Q. Not Mr. Fineberg, we know that?</p>

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<p style="text-align: right;">Page 110</p> <p>1 A. Right.</p> <p>2 Q. No one else?</p> <p>3 A. No one else.</p> <p>4 Q. You did talk to Mr. Frank, but you've told us</p> <p>5 everything about that?</p> <p>6 A. To the best of my recollection.</p> <p>7 Q. And the rest of your conversations were with</p> <p>8 Andy Cohn?</p> <p>9 A. Correct.</p> <p>10 Q. Did you see the complaint appealing the</p> <p>11 special permit before it was filed?</p> <p>12 A. I don't recall seeing it.</p> <p>13 Q. Do you know if Andy Cohn saw it?</p> <p>14 A. He probably did.</p> <p>15 Q. Did you discuss its content with Andy Cohn?</p> <p>16 A. Did not.</p> <p>17 Q. Have you ever seen it?</p> <p>18 A. I have not -- to the best of my recollection,</p> <p>19 I've never seen it.</p> <p>20 Q. What did it say?</p> <p>21 A. Very good question.</p> <p>22 MR. McGLYNN: That's a good follow-up</p> <p>23 question, Bruce.</p> <p>24 THE WITNESS: Very good. You don't mind my</p> <p>25 standing, I hope.</p>	<p style="text-align: right;">Page 112</p> <p>1 about what Andy said to me?</p> <p>2 MR. McGLYNN: The question is, did you approve</p> <p>3 the decision to settle?</p> <p>4 THE WITNESS: Yes.</p> <p>5 MR. FALBY: Q. Why?</p> <p>6 MR. McGLYNN: Same instruction; same</p> <p>7 limitation.</p> <p>8 MR. FALBY: I have to ask the question. If he</p> <p>9 instructs you not to answer, that's fine. We just have</p> <p>10 to do it.</p> <p>11 THE WITNESS: Are you instructing me to answer</p> <p>12 or not answer?</p> <p>13 MR. McGLYNN: Let's do it -- I'll ask it on</p> <p>14 the record.</p> <p>15 Is information that you need to answer that</p> <p>16 question based upon your discussions with Andy Cohn?</p> <p>17 THE WITNESS: Yes.</p> <p>18 MR. McGLYNN: Then I will instruct you not to</p> <p>19 divulge the substance of those discussions. If you had</p> <p>20 any independent basis to respond to that question,</p> <p>21 certainly feel free to do so, Bill.</p> <p>22 THE WITNESS: Okay. I do not have any</p> <p>23 independent basis. It was all based on my conversation</p> <p>24 with Andy Cohn.</p> <p>25 MR. McGLYNN: Okay. Then I will instruct him</p>
<p style="text-align: right;">Page 111</p> <p>1 MR. FALBY: Not at all.</p> <p>2 THE WITNESS: Thank you.</p> <p>3 MR. FALBY: Q. Were you involved in the</p> <p>4 decision to settle the zoning appeal?</p> <p>5 A. Yes, through Andy.</p> <p>6 Q. Why did Blue Hills Office Park settle the</p> <p>7 zoning appeal?</p> <p>8 He's looking at you, Mr. McGlynn. Are you</p> <p>9 going to object?</p> <p>10 MR. McGLYNN: If he has an independent</p> <p>11 understanding, other than anything that he had discussed</p> <p>12 with Andy Cohn, you're certainly welcome to do it. But</p> <p>13 if it's solely on the basis of anything he had with</p> <p>14 Andy -- discussion with Andy Cohn, then don't discuss</p> <p>15 that.</p> <p>16 THE WITNESS: Solely on the basis on</p> <p>17 discussions with Andy Cohn at this point. Andy and Ken</p> <p>18 were -- Andy would report back to me on decisions</p> <p>19 relating to this, and I discussed it with nobody else.</p> <p>20 Not with Dan Frank or anybody else.</p> <p>21 MR. FALBY: Q. Well, as 50 percent joint</p> <p>22 venture partner, did you approve the decision to settle</p> <p>23 the zoning appeal?</p> <p>24 A. I had discussions with Andy Cohn of that --</p> <p>25 that relate -- that Andy would say to me -- can I talk</p>	<p style="text-align: right;">Page 113</p> <p>1 not to divulge those.</p> <p>2 Now, what I will do at the next break, Bruce,</p> <p>3 is I will talk with Mr. Langelier and see if we can</p> <p>4 parse through some of this and maybe there's a way of</p> <p>5 finding some nonprivileged communications that we can</p> <p>6 divulge. But I don't want to take that time now, but I</p> <p>7 will do it at the next break.</p> <p>8 MR. FALBY: Well, so our position is clear:</p> <p>9 If you're instructing him not to answer, then we would</p> <p>10 obviously take the position that he would be forever</p> <p>11 precluded from testifying on this subject. So if you</p> <p>12 want to suffer that consequence, then I don't have any</p> <p>13 problem at all with your instruction. I'm just trying</p> <p>14 to discover what's going to be, you know, evidence in</p> <p>15 this case.</p> <p>16 MR. McGLYNN: No, I understand. And as I told</p> <p>17 you, at the break, I'll see if I can parse through this.</p> <p>18 I mean, I certainly don't want to have that discussion</p> <p>19 on the record in front of you because it may involve in</p> <p>20 total privileged communications, but let's move on.</p> <p>21 MR. FALBY: Why don't you have that discussion</p> <p>22 with him now because I suspect that all of these</p> <p>23 discussions about the settlement, what it was for, the</p> <p>24 payment, all of this stuff, he only discussed it with</p> <p>25 Andy Cohn.</p>

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1 A. Yeah, that's right.
 2 Q. And is it your understanding that those taxes
 3 became due upon the foreclosure sale?
 4 A. Correct.
 5 Q. And is that part of the damage that you're
 6 claiming in this case from the foreclosure?
 7 THE WITNESS: Can I answer that question?
 8 MR. McGLYNN: You may.
 9 THE WITNESS: Yes.
 10 MR. FALBY: Q. And what is the amount of that
 11 damage?
 12 A. Well, the damage would relate to the tax
 13 liability associated with the foreclosure, which I can't
 14 specifically quantify for you at this point. But I
 15 believe we have somebody who will do that that is a tax
 16 professional.
 17 Q. Well, I understand there's a cancellation of
 18 debt aspect to a foreclosure; right?
 19 A. Correct.
 20 Q. And that produces a tax consequence; correct?
 21 A. Correct.
 22 Q. But what we've been talking about here is a
 23 separate tax consequence that taxes become due upon
 24 distributed cash flows that were previously treated as
 25 tax deferred.

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1 A. Taxes -- you create what they call a negative
 2 capital account, and the negative capital account is the
 3 amount of tax losses you've taken over the years that
 4 accumulate in this so-called account that become due on
 5 a foreclosure and get recaptured, if you will.
 6 Q. And do you have any idea of the amounts?
 7 A. I don't.
 8 Q. None of us are tax professionals, but do you
 9 understand that the recapture of the negative capital
 10 account is different than the cancellation of debt?
 11 A. Correct.
 12 Q. Are there any other components of the tax
 13 loss, to your knowledge, other than cancellation of debt
 14 and recapture of a negative capital account?
 15 A. Not that I could think of offhand, but I'm --
 16 but there possibly are.
 17 Q. Now, did you have discussions with Dan Frank
 18 about whether there were any tenant prospects for the
 19 office park in July of 2004?
 20 A. Yes.
 21 MR. BARNETT: Should we go off the
 22 confidentiality?
 23 MR. FALBY: Yes.
 24 MR. McGLYNN: Fine. Thank you.
 25 --oOo--

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1 MR. FALBY: Yes. I'll ask that question again
 2 so it's unconfidential.
 3 Q. Did you have any discussions with Dan Frank
 4 about tenant prospects in July 2004?
 5 A. In the summer of 2004 would be a better answer
 6 because I'm not sure about July. Could have been June.
 7 Sometime in the summer -- spring, summer, correct.
 8 Q. And what did Mr. Frank tell you about tenant
 9 prospects as of the summer of 2004?
 10 A. Well, from memory, there were -- there were a
 11 variety of prospects. Again, the best of my
 12 recollection, one of them, for example, was the State of
 13 Massachusetts, and there was Dunkin' Donuts and a
 14 variety of people that were coming through that were
 15 being shown the property by Cushman & Wakefield, I
 16 believe. But other than that, I can't specifically
 17 recall.
 18 Q. Now, do you want to turn to Exhibit 42,
 19 please? Did you receive the marketing update from
 20 Cushman Wakefield dated July 21, 2004, that is marked
 21 Exhibit 42?
 22 MR. McGLYNN: At any time?
 23 MR. FALBY: No, at or around July 21, 2004.
 24 MR. McGLYNN: If you spoke that, I just didn't
 25 hear it. Sorry.

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1 THE WITNESS: I don't recall seeing this
 2 marketing flyer, no.
 3 MR. FALBY: Q. Can you turn, please, to
 4 page 0842 within the document.
 5 A. Yes.
 6 Q. Do you recall seeing the two-page marketing
 7 update that appears at this point within Exhibit 42?
 8 A. Yes, I saw this.
 9 Q. Did you see it in July of 2004?
 10 A. I don't recall, but if that's when it's dated,
 11 I recall looking at this document.
 12 Q. And do you recall seeing that the status of
 13 every prospect listed here was D, as in dead,
 14 requirement?
 15 A. I didn't know that D stood for dead.
 16 Q. Look on the second page of the chart, there's
 17 a legend at the bottom.
 18 A. Okay. I never -- I never -- I didn't know it
 19 was characterized that way.
 20 Q. Did you understand from looking at this
 21 marketing update at pages 842 and 843 of Exhibit 42,
 22 that as of July 2004, Blue Hills Office Park had no
 23 active prospects?
 24 A. I wouldn't say that's the fact. I would think
 25 that there were no active prospects being presented by

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1 the brokerage firm, but I'm not sure -- there was likely
2 to be active prospects that were not in writing that
3 were in the early stages and things like that.
4 Q. Did Joe Donovan tell you in or around
5 July 2004 that he had reported to the lender that there
6 were no leasing prospects currently?
7 A. No.
8 Q. Well, after you looked at the marketing update
9 within Exhibit 42, did you believe that there were any
10 active or current prospects to re-lease a significant
11 portion of the Blue Hills Office Park space?
12 A. I believe that the market was one that was
13 constantly moving and changing with new prospects coming
14 and going all the time. That's the nature of the beast.
15 Q. Did you learn of any prospects to lease a
16 significant portion of the Blue Hills Office Park after
17 July 21, 2004, other than the dead prospects listed
18 here?
19 A. Yeah. For example, I was told that the State
20 of Massachusetts was possibly in the loop and so was
21 Reebok possibly in the loop, just off the top of my
22 head. These aren't mentioned in here, but --
23 Q. Who told you that the State of Massachusetts
24 and Reebok were possibly in the loop?
25 A. Dan Frank, as I recall.

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1 Q. And do you know whether Dan Frank told the
2 lender that the State of Massachusetts and Reebok were
3 possible prospects to take a significant portion of the
4 Blue Hills Office Park?
5 A. I don't know.
6 Q. Do you know whether Mr. Donovan informed the
7 lender that no replacement tenant for Equiserve had been
8 found as of August 5, 2004?
9 A. I don't know.
10 Q. At the time of the settlement payment, did
11 you, yourself, look at the Credit Suisse loan documents
12 to see whether or not the payment of \$2 million and the
13 settlement of that lawsuit were something that needed to
14 be reported to the lender?
15 A. No.
16 Q. It didn't occur to you to do that, did it?
17 A. No.
18 Q. Have you ever looked at the mortgage to see
19 whether causes of action relating to the property are
20 listed as part of the Mortgaged Property, capital M,
21 capital P, that is secured by the mortgage?
22 A. No.
23 MR. McGLYNN: Objection.
24 MR. FALBY: Q. Pointing you to Granting
25 Clause Seven of the mortgage, which is Exhibit C within

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1 Exhibit 15.
2 Do you see that included within the list of
3 mortgaged property in Granting Clause Seven are causes
4 of action that now or hereafter relate to, are derived
5 from, or are used in connection with the mortgaged
6 property or the use, operation, maintenance, occupancy
7 or enjoyment thereof?
8 MR. McGLYNN: You're asking if he can see that
9 there; is that the question?
10 MR. FALBY: Yes.
11 THE WITNESS: Yes.
12 MR. FALBY: Q. Have you ever focused on that
13 language before?
14 A. No.
15 MR. McGLYNN: Objection.
16 MR. FALBY: Q. Do you see in Granting Clause
17 Four that the mortgaged property includes receipts,
18 revenues, deposits, cash, charges, and other
19 consideration of whatever form or nature received by or
20 paid to or for the account of or benefit of mortgagor or
21 its agents or employees from any and all sources arising
22 from or attributable to the premises and the
23 improvements?
24 A. Yes.
25 Q. Did you ever focus on that before?

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1 A. No.
2 Q. Did you ever consider whether that broad
3 description of consideration of whatever form or nature
4 received by or paid to or for the account of or benefit
5 of the mortgagor would include the settlement payment?
6 MR. McGLYNN: Objection.
7 THE WITNESS: No.
8 MR. FALBY: Q. Do you have any view on that
9 as you look at the language now?
10 A. No.
11 Q. That's a legal conclusion you would leave to
12 your attorney?
13 A. Correct.
14 MR. McGLYNN: I hope he would.
15 MR. FALBY: Q. And I take it your answer
16 would be the same as to whether a cause of action
17 brought to appeal a special permit by an abutting
18 mortgagor constitutes the kind of cause of action
19 described in Granting Clause Seven?
20 You would leave that to your attorney to
21 figure out?
22 MR. McGLYNN: Objection. You may answer.
23 THE WITNESS: (Witness nods head.)
24 MR. FALBY: Q. I'm sorry.
25 A. Yes, I would leave it to my attorney.

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<p style="text-align: right;">Page 182</p> <p>1 them?</p> <p>2 MR. McGLYNN: Objection.</p> <p>3 THE WITNESS: We signed a prenegotiation</p> <p>4 agreement, which is an indication to the lender we</p> <p>5 wanted to talk, and I think the lender in presenting</p> <p>6 that to us also indicated, at some point, they would be</p> <p>7 willing to talk, then something happened where they</p> <p>8 didn't.</p> <p>9 But, as I said, Mr. Falby, I think it's a</p> <p>10 question of business judgment. You don't prematurely</p> <p>11 put your cards face up on a table in a business</p> <p>12 negotiation, and that was what -- clearly the reason why</p> <p>13 nobody was going to put something in writing to the</p> <p>14 lender until there was a sitdown; and the lender refused</p> <p>15 to sit down.</p> <p>16 MR. FALBY: Q. So I still don't understand</p> <p>17 why you just didn't write a letter saying, "We'd like to</p> <p>18 meet and here's some of the things we could discuss"</p> <p>19 without binding yourself in any way to a proposal.</p> <p>20 A. Because we felt, and we continue to feel, that</p> <p>21 it's a -- it's -- it was certainly a bad faith gesture</p> <p>22 on the part of the lender refusing to meet with us. We</p> <p>23 made a good faith gesture by signing, Mr. Fineberg did,</p> <p>24 by signing this agreement to sit down, checking off the</p> <p>25 boxes, presenting information.</p>	<p style="text-align: right;">Page 184</p> <p>1 of view, you didn't do anything.</p> <p>2 A. I understand you're filtering it in your</p> <p>3 favor.</p> <p>4 Q. Well, as you are in yours --</p> <p>5 A. Of course.</p> <p>6 Q. -- from your secondhand perch out here on the</p> <p>7 West Coast.</p> <p>8 A. Absolutely. That's the way the legal ball</p> <p>9 bounces, I guess; right?</p> <p>10 Q. But I'm a lawyer and you're a fact witness,</p> <p>11 supposedly.</p> <p>12 A. There you go.</p> <p>13 MR. McGLYNN: I don't know if I should object</p> <p>14 to the characterization of secondhand perch. It's a</p> <p>15 nice perch.</p> <p>16 MR. FALBY: Q. There's obviously facts in the</p> <p>17 chronology that either you haven't been told or you're</p> <p>18 leaving out, and if there was what someone reasonably</p> <p>19 sitting back would say was a failure of communication,</p> <p>20 the question would be, well, why didn't the borrower, if</p> <p>21 it was so anxious to meet, do something to interest</p> <p>22 Lennar in meeting? And I guess your answer is that</p> <p>23 would be bad negotiating on the part of the borrower.</p> <p>24 A. Are you asking me a question?</p> <p>25 MR. McGLYNN: Objection.</p>
<p style="text-align: right;">Page 183</p> <p>1 And there was an adversarial tone set</p> <p>2 immediately by Mr. Polcari not willing to sit down. We</p> <p>3 didn't want to walk in hat in hand with a proposal in</p> <p>4 writing, general or otherwise, that would have shown</p> <p>5 that we were not good businessmen or good negotiators.</p> <p>6 We wanted to be able to have certainly the ability to</p> <p>7 get a sense from the lender where they were coming from,</p> <p>8 how they might consider a workout and within what</p> <p>9 parameters they may work with us on it, and then put</p> <p>10 something in writing, but they refused to meet with us.</p> <p>11 Q. Because they refused to meet with you, there</p> <p>12 was no way you were going to do anything to try to</p> <p>13 advance the ball beyond that?</p> <p>14 A. What else --</p> <p>15 MR. McGLYNN: Objection.</p> <p>16 THE WITNESS: -- could we have done? They</p> <p>17 refused to meet with us.</p> <p>18 MR. FALBY: Q. You could have sent them a</p> <p>19 written request for a meeting that actually listed</p> <p>20 potential topics for discussion, for example?</p> <p>21 MR. McGLYNN: Objection.</p> <p>22 THE WITNESS: I put that in the speculative</p> <p>23 category. It's could have, should have, would have.</p> <p>24 Hindsight's 20/20 on a lot of things.</p> <p>25 MR. FALBY: Q. Well, obviously from our point</p>	<p style="text-align: right;">Page 185</p> <p>1 MR. FALBY: Yeah.</p> <p>2 MR. McGLYNN: Object.</p> <p>3 THE WITNESS: I didn't quite understand the</p> <p>4 question.</p> <p>5 MR. FALBY: I'll rephrase the question.</p> <p>6 MR. McGLYNN: Please.</p> <p>7 MR. FALBY: Q. When you learned that Dan</p> <p>8 Frank had supposedly requested a meeting and been</p> <p>9 rebuffed, you thought the best course was then to</p> <p>10 proceed to a foreclosure rather than do anything else to</p> <p>11 try to work out this loan with Lennar?</p> <p>12 MR. McGLYNN: Objection.</p> <p>13 THE WITNESS: We sent Lennar a letter. We</p> <p>14 talked to Lennar and they -- they wrote us back and</p> <p>15 refused to sit down, I believe, in a letter.</p> <p>16 That was in writing; am I correct, Counsel?</p> <p>17 MR. McGLYNN: I'll let you testify as to your</p> <p>18 best recollection.</p> <p>19 THE WITNESS: That's my best recollection.</p> <p>20 And, you know, to suggest that the lender should be</p> <p>21 absolved here because they were in the right by refusing</p> <p>22 to sit down with us and discuss any early stage of</p> <p>23 negotiations on a workout seems to me to be clearly, in</p> <p>24 fact, distilling it in your favor, but the bottom line</p> <p>25 is they clearly refused to meet with us.</p>

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<p style="text-align: right;">Page 266</p> <p>1 work the issues through.</p> <p>2 Q. You had a conversation --</p> <p>3 A. Even though the lender refused to, we thought</p> <p>4 the lender would come around.</p> <p>5 Q. You had a conversation with Mr. Frank about a</p> <p>6 standstill period?</p> <p>7 A. To a certain extent that we were hoping to get</p> <p>8 a standstill period and a period of time in which we</p> <p>9 could, in fact, meet with the lender, that the lender</p> <p>10 would acquiesce or relent.</p> <p>11 Q. When did you have that conversation with</p> <p>12 Mr. Frank?</p> <p>13 A. That was in the fall of '04.</p> <p>14 Q. Was it the same conversation in which he</p> <p>15 related that he'd asked for a meeting and that Lennar</p> <p>16 had refused?</p> <p>17 A. I don't recall.</p> <p>18 Q. What else did you or Mr. Frank say during that</p> <p>19 conversation?</p> <p>20 A. I just don't recall.</p> <p>21 Q. Do you recall anything about your conversation</p> <p>22 with Mr. Frank other than that you were discussing the</p> <p>23 possibility of a standstill?</p> <p>24 A. Possibility of?</p> <p>25 Q. A standstill.</p>	<p style="text-align: right;">Page 268</p> <p>1 around at the last minute, which is very often the case,</p> <p>2 and that sort of thing.</p> <p>3 Q. And you understood, did you, that a standstill</p> <p>4 would be an accommodation that the lender would make?</p> <p>5 A. Oftentimes is, yes, that's correct.</p> <p>6 Q. And did you know or understand whether a</p> <p>7 standstill was something that you were entitled to or</p> <p>8 that the lender was obligated to give you under the loan</p> <p>9 documents?</p> <p>10 A. No. It was -- the lender was not obligated to</p> <p>11 give us this under the loan documents, correct.</p> <p>12 Q. It was something that you wanted to request</p> <p>13 which you hoped they would accommodate you by granting?</p> <p>14 A. Yes.</p> <p>15 Q. Did you have conversations with anybody at</p> <p>16 Fineberg Management other than Mr. Frank on the topic of</p> <p>17 possibly working something out with Lennar?</p> <p>18 A. No.</p> <p>19 MR. McGLYNN: You mean other than what we've</p> <p>20 talked about?</p> <p>21 MR. FALBY: Other than anything you've</p> <p>22 testified to.</p> <p>23 THE WITNESS: No.</p> <p>24 MR. FALBY: Q. Did you know that Mr. Fineberg</p> <p>25 had walked away from two hotel properties in Sturbridge</p>
<p style="text-align: right;">Page 267</p> <p>1 A. You know, this is a product of two minutes</p> <p>2 here, five minutes there, 30 seconds, a variety of phone</p> <p>3 calls over a course of, you know, a period of time that</p> <p>4 I'm distilling for you to say that what we really were</p> <p>5 hoping for is that the lender would show us some good</p> <p>6 faith and meet with us. And that was what we thought</p> <p>7 would happen even the day before the foreclosure.</p> <p>8 Q. Did you ever request a standstill?</p> <p>9 A. No, I don't believe we did.</p> <p>10 Q. So you were having if not regular at least</p> <p>11 periodic or more than one conversation with --</p> <p>12 A. A snippet here, a snippet there. I'm sorry.</p> <p>13 Q. You have to wait until I'm done.</p> <p>14 A. I'm sorry. Sure.</p> <p>15 Q. You were having conversations, plural, with</p> <p>16 Mr. Frank in the fall of 2004?</p> <p>17 A. Correct.</p> <p>18 Q. Can you tell me anything more about what you</p> <p>19 or he said during those conversations than you already</p> <p>20 have?</p> <p>21 A. Just don't recall with specificity other than</p> <p>22 the theme of them, which I think I just told you.</p> <p>23 Q. Which was that you'd like to get a standstill?</p> <p>24 A. Like to get a standstill, like to sit down</p> <p>25 with the lender, maybe the lender will, you know, come</p>	<p style="text-align: right;">Page 269</p> <p>1 and Lancaster; that is, Sturbridge, Massachusetts and</p> <p>2 Lancaster, Pennsylvania, shortly before July 31, 2004?</p> <p>3 A. No.</p> <p>4 Q. Did you know that Lennar was the special</p> <p>5 servicer on those loans?</p> <p>6 A. No.</p> <p>7 Q. Lennar's only experience with Mr. Fineberg is</p> <p>8 in connection with those two deals in which he turned</p> <p>9 over the keys to the property.</p> <p>10 A. I don't see how that's relevant.</p> <p>11 Q. I'm asking you if you knew that.</p> <p>12 A. Oh, no.</p> <p>13 MR. McGLYNN: How we doing on time, Bruce?</p> <p>14 MR. FALBY: We're fine.</p> <p>15 MR. McGLYNN: I've got -- literally I've got</p> <p>16 about two more minutes before we have to either conclude</p> <p>17 or suspend.</p> <p>18 MR. FALBY: I was going to go until 5:00.</p> <p>19 MR. McGLYNN: I will not have enough time.</p> <p>20 MR. FALBY: Well, I don't think that's fair.</p> <p>21 MR. McGLYNN: Well, I told you this at 9:05</p> <p>22 this morning.</p> <p>23 MR. FALBY: We've had this on the calendar for</p> <p>24 weeks. I'm entitled to seven hours, which I don't think</p> <p>25 we've hit.</p>

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EXHIBIT 8

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3 --oOo--

4 BLUE HILLS OFFICE PARK, LLC,)

5 Plaintiff/Defendant-in-Counterclaim)

6 vs.)

) Civil Action No.
) 05-CV-10506 (WGY)

7 J.P. MORGAN CHASE BANK, as Trustee for)
the Registered Holders of Credit)
8 Suisse First Boston Mortgage Securities)
Corp., Commercial Mortgage Pass-Through)
9 Certificates, Series 1999-C1,)

10 Defendant)

11 and CSFB 1999-C1 ROYALL STREET, LLC,)

12 Defendant/Plaintiff-in-Counterclaim)

13 and)

14 WILLIAM LANGELIER and GERALD FINEBERG,)

15 Defendants-in-Counterclaim)

16
17 DEPOSITION OF BRENT LLOYD

18
19 Thursday, March 9, 2006
20 Volume I (Pages 1 - 82)

21
22
23 REPORTED BY: CYNTHIA A. PACINI, CSR #6117, RMR, CRR
24 (03-378690)
25

<p style="text-align: right;">Page 26</p> <p>1 Q. All right. And the town of Canton showed up 2 as being not postal protected? 3 A. Correct. 4 Q. So you had this discussion with Jill Martin. 5 And what happened after that? 6 A. I then went into Deborah Lambson's office and 7 talked with her regarding advancing payments. 8 Q. And Lambson is -- was your superior? 9 A. Yes. 10 Q. And you went -- for what purpose did you go 11 see Deborah Lambson? 12 A. For a backup purpose. 13 Q. A backup purpose being to get authorization to 14 pay the taxes? 15 A. Correct. 16 Q. Okay. And what happened after that? 17 A. I informed Deborah Lambson of the situation, 18 the severity of the situation with the due date. I 19 notified her that I've contacted Jill Martin and was 20 seeking her help with the reserves, and she told me to 21 let her know the status. 22 Q. Have you finished your answer? 23 A. Yes. 24 Q. And this was -- you indicated that you 25 notified Ms. Lambson about the severity of the</p>	<p style="text-align: right;">Page 28</p> <p>1 MR. BARNETT: Objection. 2 MR. McGLYNN: Q. Isn't that correct? 3 MR. BARNETT: Objection. 4 THE WITNESS: It's not my responsibility to 5 question that. 6 MR. McGLYNN: Q. Did you do any research as 7 to what the town of Canton would do in the event that a 8 tax payment was a few days late? 9 A. Since I was notified on July 29th, 2004, I 10 didn't have enough time to contact the agency as my 11 priority was to get the taxes paid. 12 Q. But you've been involved in facilitating the 13 payment of taxes to the town of Canton on this loan 14 since January 2002; correct? 15 A. That is incorrect. 16 Q. What's incorrect about my question? 17 A. I had paid sometimes to the town of Canton for 18 this loan, not every time. 19 Q. In other words, there's somebody else within 20 your department that was responsible for that? 21 A. Yes. 22 Q. Was there any time that you can recall the 23 taxes were paid late to the town of Canton on this 24 account? 25 A. There was not a time I can recall.</p>
<p style="text-align: right;">Page 27</p> <p>1 situation. 2 Do you recall that testimony just a few 3 seconds ago? 4 A. Yes. 5 Q. Why was the situation so severe at least as 6 you understood it? 7 A. Our primary obligation in that department as 8 loan servicing representatives is to ensure taxes are 9 paid timely. Usually we get notifications of tax 10 amounts due a couple weeks prior to their due date. 11 In this case, we were at Thursday and we had 12 until Monday to get these taxes paid. The only way to 13 make the payment was overnight delivery, so this was a 14 severe situation. 15 Q. Well, what happened if you were a day or two 16 late? 17 MR. BARNETT: Objection. 18 THE WITNESS: If we are late with a payment, 19 then the taxes are delinquent. 20 MR. McGLYNN: Q. So what happens? 21 MR. BARNETT: Objection. 22 THE WITNESS: The taxing authority can put a 23 lien on the property. 24 MR. McGLYNN: Q. But you know that doesn't 25 happen if you're a day or two late?</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. Okay. But you don't know, as you sit here 2 now, whether or not the town of Canton would have put a 3 lien if the taxes were a couple days late? 4 MR. BARNETT: Objection. You can answer. 5 THE WITNESS: There's no way of knowing what 6 they would have done with the property. 7 MR. McGLYNN: Q. All right. So did you get 8 authority from Deborah Lambson to pay the taxes? 9 A. Not at this point. 10 Q. All right. So did you hear back from Jill 11 Martin? 12 A. Yes, I did. 13 Q. Same day? 14 A. Same day. 15 Q. And what did she say? 16 A. She informed me that the borrower could not 17 just move money from the reserves, that they would 18 require what is known as a lien waiver in order to get 19 access to move this money. 20 Q. What kind of a lien waiver? 21 MR. BARNETT: Objection. 22 THE WITNESS: Since it's not -- I don't work 23 in the reserve department. I wasn't sure what the lien 24 waiver was. 25 MR. McGLYNN: Q. All right. So you didn't --</p>

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1 WF01746.
 2 A. That says noncompliance with the notepad.
 3 Q. All right. This is a summary of a
 4 subsequent -- the subsequent telephone call that you had
 5 with Mr. Stone concerning noncompliance?
 6 A. That is not my notepad.
 7 Q. This is not yours. Now, how do you know that?
 8 A. Because on that day, there was two of us that
 9 had received calls from Gil Stone.
 10 Q. When you say "two of us," two of us within
 11 your department?
 12 A. Yes.
 13 Q. Who was the second of the two of us?
 14 A. The representative that was required to pay
 15 the taxes.
 16 Q. And who was that?
 17 A. Deanna Engstrom.
 18 Q. Deanna Engstrom?
 19 A. Yes.
 20 Q. And Mr. Stone called Deanna Engstrom?
 21 A. I would believe either he called her or she
 22 called him.
 23 Q. All right. And does that particular -- and
 24 your testimony today, sir, is that WF01746 is a notepad
 25 prepared by Deanna Engstrom?

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1 A. I believe so, yes.
 2 Q. All right. Is there anything on this notepad
 3 that indicates who the writer is?
 4 A. No.
 5 MR. BARNETT: Would you like him to compare it
 6 to the exhibit that Ms. Martin compared them to?
 7 MR. McGLYNN: You know what, if you were
 8 conducting this deposition, I'd let you do that, but I'm
 9 going to do it.
 10 MR. BARNETT: It's your deposition. I'm
 11 sorry.
 12 MR. McGLYNN: Thanks.
 13 Q. WF01745, can you look at that? Can you tell
 14 whether or not that's -- can you tell from the face of
 15 that document whether the -- strike that.
 16 Can you tell from the face of that document
 17 who prepared this?
 18 A. I can tell from looking at the notepad who
 19 prepared it.
 20 Q. All right. Did you prepare it?
 21 A. Yes.
 22 Q. You know that for a fact?
 23 A. Yes.
 24 Q. And you know for a fact that Deanna Engstrom
 25 prepared 01746?

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1 A. I believe she prepared it.
 2 Q. All right. Why do you believe she prepared
 3 it?
 4 A. Because she was the only representative, other
 5 than myself, who was responsible for the payment of this
 6 tax at this time.
 7 Q. What about Deborah Lambson?
 8 A. Deborah Lambson oversaw our group.
 9 Q. All right. Now, you'll agree with me that the
 10 notes appearing on WF01745 do not indicate that you
 11 advised Mr. Stone that he was -- that nonpayment of
 12 taxes constituted an event of default; correct?
 13 A. I believe the notepad is a summary, not a full
 14 recap of the conversation.
 15 Q. Well, wouldn't that have been important to put
 16 in that summary that you advised the borrower that
 17 nonpayment of taxes constituted an event of default?
 18 MR. BARNETT: Objection to the vague term
 19 "important."
 20 MR. McGLYNN: Q. You may answer.
 21 A. In a notepad, you cannot reference speculation
 22 of default.
 23 Q. It's okay to do it in a phone call, but not in
 24 a notepad?
 25 A. You may give notice to a borrower if they are

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1 in event of default.
 2 Q. All right. And did you -- is it your
 3 testimony today, sir, that you gave Mr. Stone notice
 4 that nonpayment of taxes constituted an event of
 5 default?
 6 A. Yes.
 7 Q. And you had the authority to do that?
 8 MR. BARNETT: Objection.
 9 MR. McGLYNN: Q. You may answer.
 10 A. The authority was irrelevant at this point.
 11 Q. Did you have authority to advise a borrower
 12 that nonpayment of taxes constituted an event of default
 13 as of July 29, 2004?
 14 MR. BARNETT: Objection.
 15 THE WITNESS: I gave him notice. I did not
 16 say that he would be in default. I gave him notice that
 17 if his taxes weren't paid, it could be an event of
 18 default.
 19 MR. McGLYNN: Q. How did you know it could be
 20 an event of default?
 21 A. Because in the loan agreement, it specifies
 22 that nonpayment of taxes can be an event.
 23 Q. Did you look at the loan agreement before you
 24 gave that notification to Mr. Stone?
 25 A. No.

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1 Q. Had you looked at the loan agreement?
 2 MR. BARNETT: Objection. Asked and answered.
 3 You can answer.
 4 THE WITNESS: I'm not for certain if I had or
 5 had not.
 6 MR. McGLYNN: Q. All right. Did you send out
 7 a query to Mr. Parish's group asking whether or not
 8 nonpayment of taxes constituted an event of default?
 9 A. A query for a nonpayment of default?
 10 Q. Did you send out a query to Mr. Parish's
 11 department as to whether or not on this loan nonpayment
 12 of taxes constituted an event of default?
 13 A. Mr. Parish's group wouldn't have anything to
 14 do with that.
 15 Q. You said Mr. Parish was involved in the client
 16 solutions group.
 17 A. In the systems end.
 18 Q. Well, you indicated the main purpose was "to
 19 run queries for various departments."
 20 Do you recall that?
 21 A. Yes.
 22 Q. And query was your word?
 23 A. Queries are Strategy processed reports.
 24 Q. So now it's queries for reports as opposed to
 25 specific information concerning a loan; correct?

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1 MR. BARNETT: Objection.
 2 MR. McGLYNN: Q. You may answer.
 3 A. Let me specify for the record. Queries are
 4 used primarily to run data from the Strategy system we
 5 operate on. They are not used to produce loan
 6 agreements or any other core documents associated with a
 7 loan.
 8 Q. What department -- have you finished your
 9 answer?
 10 A. Yes.
 11 Q. What department would you have communicated
 12 with to ascertain whether nonpayment of taxes would have
 13 constituted an event of default for this loan?
 14 MR. BARNETT: Objection. It either
 15 mischaracterizes his testimony or calls for speculation,
 16 but you can answer the question.
 17 THE WITNESS: If an event of default were to
 18 occur, asset administration group would be contacted.
 19 MR. McGLYNN: Q. And that was Mr. Curtis
 20 Mallegni?
 21 MR. BARNETT: Objection.
 22 THE WITNESS: Curtis Mallegni was the overseer
 23 of the asset managers.
 24 MR. McGLYNN: Q. All right. Now, when you
 25 told Mr. Stone -- well, you told Mr. Stone that

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1 nonpayment of taxes would or might be an event of
 2 default? Which one?
 3 MR. BARNETT: Objection. You can answer.
 4 THE WITNESS: It would be an event of default.
 5 MR. McGLYNN: Q. All right. And what did he
 6 say?
 7 A. He said he would get back to me.
 8 Q. All right. And you'll agree with me that
 9 neither -- do you know if Ms. Engstrom advised Gil Stone
 10 during her conversation that the borrower would be in
 11 default for nonpayment of taxes?
 12 A. I do not know.
 13 Q. All right. Does she record that type of
 14 notification or advice to Mr. Stone in her notepad or
 15 her note maintenance log?
 16 A. She refers in her notepad to the shortage and
 17 the reserve department being contacted.
 18 Q. All right. And that reserve department, is
 19 that Jill Martin again?
 20 A. That would be her group.
 21 Q. Okay. Now -- and after July 29, 2004, did you
 22 have any further communications with Gil Stone?
 23 A. No.
 24 Q. And you'll agree with me also that you got
 25 down there Gil Stern; correct?

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1 A. There was a typo on the notepad.
 2 Q. Well, there's two typos, yours and Deanna
 3 Engstrom's; correct?
 4 MR. BARNETT: Objection.
 5 THE WITNESS: Yes.
 6 MR. McGLYNN: Q. Well, flip the page. She's
 7 got Gil Stern as well?
 8 MR. BARNETT: He's on her page.
 9 MR. McGLYNN: Q. Okay. So both you and
 10 Deanna Engstrom had made a typographical error; correct?
 11 A. Based off of our conversations with Gil.
 12 Q. Two different people, same typographical
 13 error; correct?
 14 A. Yes.
 15 Q. Two different phone calls; correct?
 16 A. Yes.
 17 Q. Now, take a look at Stone 4, which is right to
 18 your left there. Now, that's the tax deficiency
 19 notification that was sent out on July 16, 2004?
 20 A. Yes.
 21 Q. All right. And this is essentially the --
 22 this notice or substantially similar notice was sent out
 23 every quarter to this borrower?
 24 A. The taxes were due quarterly so a quarterly
 25 notice was sent.

EXHIBIT 9

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3 --oOo--

4 BLUE HILLS OFFICE PARK, LLC,)

5 Plaintiff/Defendant-in-Counterclaim)

6 vs.)

Civil Action No.

) 05-CV-10506 (WGY)

7 J.P. MORGAN CHASE BANK, as Trustee for)
the Registered Holders of Credit)

8 Suisse First Boston Mortgage Securities)
Corp., Commercial Mortgage Pass-Through)

9 Certificates, Series 1999-C1,)

10 Defendant)

11 and CSFB 1999-C1 ROYALL STREET, LLC,)

12 Defendant/Plaintiff-in-Counterclaim)

13 and)

14 WILLIAM LANGEЛИER and GERALD FINEBERG,)

Defendants-in-Counterclaim)

17 DEPOSITION OF CURTIS J. MALLEGNI

19 Wednesday, March 8, 2006

20 Volume I (Pages 1 - 247)

23 REPORTED BY: CYNTHIA A. PACINI, CSR #6117, RMR, CRR
24 (03-378932)

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1 A. Okay.

2 Q. Is that the first letter you recall seeing?

3 A. Well, it's not addressed to me. It's

4 addressed to Tim Parish.

5 Q. And who is or was Tim Parish?

6 A. I don't know.

7 Q. Do you know if Tim Parish worked for Wells

8 Fargo?

9 A. I presume so. There are 150 people in the

10 servicing group, so I don't know each one of them

11 personally.

12 Q. Have you ever heard of Tim Parish before?

13 A. I see him on the correspondence, but other

14 than that, no, I had not heard.

15 Q. All right.

16 A. Don't recall. I think that's a better --

17 Q. Do you know whether or not Mr. Parish in 2004

18 worked for the property tax department for Wells Fargo?

19 A. I don't, but I have, you know --

20 MR. BARNETT: Don't presume.

21 THE WITNESS: I just don't know.

22 MR. McGLYNN: Q. All right. But this letter,

23 Donovan 23, is addressed to Wells Fargo Commercial

24 Mortgage Servicing at the Willow Pass, Concord,

25 California address; correct?

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1 A. Correct.

2 Q. Is that the proper address located at -- of

3 Wells Fargo located up in Concord, California?

4 A. Yes.

5 Q. Okay. All right. Have you seen this

6 particular exhibit Donovan 23 prior to today?

7 A. I think I have. I think it was part of a fax

8 that I received from Mr. Donovan.

9 Q. And that would be?

10 A. Which had, I believe, two letters attached to

11 it.

12 Q. Polcari 56. Is that the fax that you're

13 referring to, sir?

14 A. It looks a little different. This is the fax,

15 to answer your question.

16 MR. BARNETT: Go to the last page. The last

17 page. Okay.

18 THE WITNESS: And this appears to be a copy of

19 the same letter that's attached to this fax.

20 MR. McGLYNN: Q. All right.

21 A. Except that the number, as counsel has pointed

22 out, one says Blue Hills 1227. The one you initially

23 presented says 1229 on it.

24 Q. But they're separate exhibits at least marked

25 in these exhibits, correct? One is Donovan 23?

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1 A. Yes.

2 Q. And the other one is Polcari 56; is that

3 correct?

4 A. That's correct.

5 Q. And Polcari 56 is a multi-page document which

6 has as its first page a fax transmittal letter addressed

7 to you?

8 A. Correct.

9 Q. And you recall receiving this on or about the

10 13th of August, 2004?

11 A. Yes.

12 Q. And this was from Joseph Donovan?

13 A. Yes.

14 Q. And did this fax -- strike that.

15 Was this fax preceded by a phone call between

16 you and Mr. Donovan?

17 A. Yes. As I remember, Mr. Donovan and I were

18 trying to make contact. I had made contact with him

19 about the status of the building in terms of the tenancy

20 and then I had gone on vacation for a week, and then I

21 think it says here "Sorry we have been missing each

22 other on the phone. I would like to get this special

23 servicer involved."

24 So there was probably some voicemail back and

25 forth and then finally I had asked him for something in

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1 writing, and this is what he provided.

2 Q. Did you actually have a conversation with him?

3 A. Yes.

4 Q. All right. And that was prior to August 13,

5 2004?

6 A. Yes.

7 Q. Do you recall, was it in August that you had

8 the conversation?

9 A. I don't remember.

10 Q. And were you on vacation when this particular

11 fax came in?

12 A. No. I believe I had returned. I was in the

13 office.

14 Q. And how long were you on vacation?

15 A. A week.

16 Q. Do you have any recollection of the

17 conversation that you had with Mr. Donovan?

18 A. Not specifically.

19 Q. Do you make notes or memoranda of

20 conversations that you have with borrowers, at least

21 when you were asset manager for Wells Fargo?

22 A. Not always. I do occasionally, but not

23 always.

24 Q. Now, the letters that were attached to

25 Mr. Donovan's fax, Polcari 56, can you just turn to

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1 Q. And do you have an understanding of the
2 specific uses that Mr. Donovan had requested of the
3 reserve funds in Donovan 23?

4 MR. BARNETT: Does he now have an
5 understanding?

6 MR. McGLYNN: I'm going to ask him does he
7 have an understanding, then we can narrow it down.

8 THE WITNESS: Well, the letter speaks for
9 itself. And he is requesting a withdrawal from the cash
10 flow subaccount, so --

11 MR. McGLYNN: Q. And that letter requests
12 withdrawals from the cash flow subaccounts for two
13 purposes; correct?

14 MR. BARNETT: Objection.

15 THE WITNESS: Well, again, I did not deal with
16 the reserves. I was in the escalation process, so I
17 wasn't dealing with these specific requests.

18 MR. McGLYNN: Q. But normally these requests,
19 if they came into, in this case, the reserve department,
20 would those be referred to you for --

21 A. No.

22 Q. -- an answer or recommendation?

23 A. No, not necessarily, no.

24 Q. So it would be within the power of the reserve
25 account to grant or deny access to reserve accounts as

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1 requested by a borrower?

2 MR. BARNETT: Objection.

3 THE WITNESS: Yes. The reserve team reviews
4 the requests, determines if the conditions have been
5 met, and then concludes whether or not they can disburse
6 the reserve's monies.

7 MR. McGLYNN: Q. Okay. And do you know
8 whether or not any member or members of the reserve team
9 ever advised Joseph Donovan or anybody from Blue Hills
10 Office Park that BHOP could or could not access reserve
11 accounts for the purposes requested in Donovan 23?

12 A. I have no recollection of that.

13 Q. Did you -- as reflected in your e-mail to
14 Ms. O'Neal, you knew at least at the time that you were
15 preparing this e-mail, that BHOP had requested a meeting
16 with the special servicer; correct?

17 A. Correct.

18 Q. And you know that Mr. Donovan had requested in
19 his letter of August 5, 2004, a meeting either with the
20 special servicer or a meeting between Wells Fargo and
21 the special servicer; correct?

22 MR. BARNETT: Objection.

23 THE WITNESS: I was aware of his request with
24 the special servicer. I think one of the letters does
25 suggest more generically the lender or -- here, let me

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1 find it.

2 MR. McGLYNN: Okay.

3 THE WITNESS: Yeah. It says, "Therefore, we
4 request a meeting with the lender to discuss the loan
5 status and future performance. Based on our past
6 experience, any decisions regarding the loan would need
7 the approval of special servicer, therefore, we request
8 the special servicer attend the meeting as well."

9 MR. BARNETT: I'll just note for the record
10 that the witness was reading from the August 5th
11 letter of Mr. Donovan marked Blue Hill 1246.

12 MR. McGLYNN: Thank you, Bruce.

13 Q. To your knowledge, did you have or did anybody
14 within the Wells Fargo organization have any
15 communications with Donovan or anybody else from Blue
16 Hills Office Park about granting his request for a
17 meeting with the lender?

18 A. Well, the gist of my conversations -- I don't
19 know of any other people other than myself. I speak for
20 myself. And the gist of what I can recall of our
21 conversation was that he did want a meeting with Lennar
22 or with the special servicer, so to speak, or with the
23 special servicer. And it was my sense of it that
24 Mr. Donovan understood that the special servicer had
25 authority and powers beyond the master servicer in terms

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1 of the loan.

2 Q. And your recollection was that you had this
3 meeting with Mr. -- strike that -- this conversation
4 with Mr. Donovan before you went on vacation?

5 MR. BARNETT: Objection.

6 THE WITNESS: I don't remember when I had that
7 conversation.

8 MR. McGLYNN: Q. And you don't recall having
9 any -- making any notation or log of that discussion
10 with Mr. Donovan?

11 A. I may have. I've produced it if I have, but
12 as I sit here, I don't recall.

13 Q. And would it be a fair statement that whatever
14 record you have of that discussion, that would not show
15 up on the Loanicator?

16 A. Correct.

17 Q. This is for things that happen out in Concord,
18 California?

19 A. Correct.

20 Q. Okay. And you only had one discussion with
21 Mr. Donovan that you can recall?

22 A. Oh, I think I had a couple of discussions with
23 him.

24 Q. And these were on the telephone?

25 A. Yes.

EXHIBIT 10

Lawrence G. Needle

03/17/2006

CONFIDENTIAL

Page 1

Volume: I

Pages : 1 - 188

Exhibits: 300 - 321

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-CV-10506 (WJY)

BLUE HILLS OFFICE PARK LLC,
Plaintiff, Defendant-in-Counterclaim,

Vs.

J.P. MORGAN CHASE BANK, as Trustee for the Registered
Holders of Credit Suisse First Boston Mortgage
Securities Corp., Commercial Mortgage Pass-Through
Certificates, Series 1999-C1.,
Defendant.

and

CSFB 1999-C1 ROYALL STREET, LLC;
Defendant, Plaintiff-in-Counterclaim,

Vs.

WILLIAM LANGELIER and GERALD FINEBERG,
Defendants-in-Counterclaim.

DEPOSITION OF LAWRENCE G. NEEDLE
Friday, March 17, 2006, 10:10 a.m.
DLA Piper Rudnick Gray Cary US LLP
33 Arch Street
Boston, Massachusetts
Reporter: Rosemary F. Grogan, CSR, RPR

CONFIDENTIAL

<p>Page 74</p> <p>1 Q. And in his third sentence he said -- it says 2 that he said, His client has spoken with the petitioner, 3 but there's been no resolution? 4 A. Yes. 5 Q. Do you agree that the issue of the parking 6 garage hadn't been resolved as of May 22, 2003 at the 7 Board of Appeals meeting? 8 A. Yes. 9 Q. About four lines down from there, it states 10 that Mr. Lilienthal said after the building has full 11 occupancy, he feels it will have a major effect on the 12 traffic. He further stated the proposal obstructs his 13 client's current view from the southwest. He stated 14 there's a large area of impervious surface which has not 15 been dealt with. 16 Does that summarize your concerns at the 17 time of the May 22, 2003 meeting? 18 MS. SWISHER: Objection. 19 A. Yes. 20 Q. Two paragraphs down from that it says: 21 Attorney Lilienthal stated he has not participated in 22 any discussions between his client and petitioner. 23 Does that refresh your recollection as to 24 whether any attorneys attended the meeting that he,</p>	<p>Page 76</p> <p>1 A. Correct. 2 Q. What else did you do between the time of the 3 first meeting and the time the permit was approved in 4 response to the application for the permit? 5 A. Beyond the fact they agreed to drop the 6 parking garage four feet at that first meeting, nothing; 7 four feet more into the ground at that first meeting, 8 nothing. 9 Q. More into the ground, did you say? 10 A. Correct. 11 Q. Did you speak to Mr. Frank or Mr. Fineberg 12 about the parking garage outside of your meeting with 13 Mr. Tye and his architect? 14 A. I don't recall. 15 Q. Are you aware that DST Realty and National 16 Development had entered into a purchase and sale 17 agreement for DST Realty to buy 250 Royall Street? 18 A. At what point in time? 19 Q. Are you aware today? 20 A. I am aware today. 21 Q. Were you aware in May of 2003? 22 A. I became aware sometime before they left the 23 building, but I couldn't be specific as to the date. 24 Q. Have you ever seen that purchase and sale</p>
<p>Page 75</p> <p>1 Mr. Frank and Mr. Fineberg had with his architect? 2 A. No. 3 Q. The top of the next page, page 4 of 10 of the 4 internal pagination of this document, there's a note 5 that the motion to approve petition was unanimously 6 granted. Do you see that? 7 A. Yes. 8 Q. So it was May 22, 2003 that the petition was 9 granted? 10 MS. SWISHER: Objection. 11 BY MR. BARNETT: 12 Q. At that Board of Appeals hearing? 13 A. According to this, yes. 14 Q. Between the first board of appeals hearing 15 that you attended, and then the document referred to 16 being held on May 1st, and this hearing on May 22nd, 17 other than meeting with Mr. Tye and his architect, what 18 did you do to respond to EquiServe and National 19 Development's petition to build a parking garage? 20 MS. SWISHER: Objection. 21 A. Can you rephrase that? 22 Q. After the first hearing, but before the permit 23 was approved, you had a meeting with Mr. Tye and his 24 architect?</p>	<p>Page 77</p> <p>1 agreement? 2 A. No. 3 Q. Did you know that in May or June of 2003, were 4 you aware that the purchase and sale agreement was 5 conditioned on getting permits to build the parking 6 garage? 7 A. Yes. 8 Q. How did you come by that information? 9 A. I believe I was told that by Dan Frank. 10 Q. Within the time frame of May to June 2003, can 11 you be any more specific when Mr. Frank told you that? 12 A. No. 13 Q. In terms of whether it was before or after the 14 permit was granted? 15 A. No. 16 Q. What was the context of Mr. Frank telling you 17 that? 18 A. I don't recall. 19 Q. Did he ask you to do anything in connection 20 with telling you that? 21 A. No. 22 Q. And you said you never saw that purchase and 23 sale agreement? 24 A. No.</p>

20 (Pages 74 to 77)

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A. No.

Q. On the second page of Exhibit 1 is a letter to Jim Lingle from you dated September 29, 1999; is that right?

A. Yes.

Q. Is this a letter you referred to earlier this morning as one you sent to the lender concerning property taxes?

A. Yes.

Q. In the middle paragraph it says in the second sentence: In order to do so, we bring payment each quarter to the Town of Canton and immediately fax the receipted copy to the tenant and the mortgagee.

Do you see that?

A. Yes.

Q. Does that mean that Blue Hills Office Park would pay the Town of Canton directly for the real estate taxes under the prior arrangement?

A. No, I don't believe that -- under the prior arrangement with the previous lender, yes.

Q. Under the prior arrangement with the previous lender, Blue Hills Office Park paid the Town of Canton directly without sending money through the lender; is that right?

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1 changed between the previous lender under the Credit Suisse loan at least with respect to Blue Hills Office Park, bringing the check to the Town of Canton?

A. Correct.

Q. Do you remember if you got a response from Wells Fargo -- let me rephrase that.

Do you remember if you got a response from Jim Lingle at Orix to your letter that is included in Exhibit 1?

A. I don't remember.

Q. Now, we saw the fax cover page for Exhibit 1 earlier, right?

A. Yes.

Q. And this fax is from Paul Halloran?

A. Yes.

Q. There was a time that you said you were assistant to Paul Halloran --

A. Yes.

Q. -- is that right?

But that was not during the time this fax was sent; isn't that right?

A. No.

Q. And that was not during the time you wrote the September 29 letter that's page two of this exhibit; is

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A. I'm not sure. I'm not sure. I do remember I used to bring a check down, but I'm not sure if the check was written from us or the previous lender.

Q. I see.

So under the previous regime, you yourself, sounds like, paid the property taxes by bringing a check to the Town of Canton?

A. Correct.

Q. What you're unsure of is whether the check was from an escrow account at the previous lender or EquiServe or Blue Hills; the source of the check is unclear, but you brought it to the Town of Canton?

A. Correct.

Q. And under the Credit Suisse loan that did not happen; is that right?

A. Correct.

Q. You didn't bring the checks to the Town of Canton?

A. Not that I recall.

Q. And no one else at Blue Hills brought the checks --

A. No.

Q. -- to the Town of Canton?

And so the arrangement for property taxes

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1 that right?

A. Yes.

Q. Years before that?

A. At least 10.

Q. Do you know if Mr. Halloran got a response from Wells Fargo to his fax of your letter, his fax going to Elham at Wells Fargo?

A. I don't know.

Q. After the loan went to -- let me rephrase that.

After the inception of the Credit Suisse loan, what's your understanding of the process or sequence of events by which the property taxes would be paid for any given quarter?

A. First and second quarter, I would bill the tenant at least 30 days in advance and give them two weeks prior to that due date to send the check to the lock box for Wells Fargo. The third quarter, I would usually have to go to the Town of Canton in order to get it on time because at that point the assessment usually changed on the property.

So sometimes they had less than 30 days to come up with the money, but they still had to send it in to the lock box in all cases.

EXHIBIT 11

1

1 Volume: I
2 Pages: 1-273
3 Exhibits: 45-83

3 UNITED STATES DISTRICT COURT
4 FOR THE DISTRICT MASSACHUSETTS

5 - - - - - x

5 BLUE HILLS OFFICE PARK, LLC,
6
7 Plaintiff/Defendant-in-Counterclaim,
8
9 v.

8 J.P. MORGAN CHASE BANK, as Trustee
9 for the Registered Holders of
10 Credit Suisse First Boston Mortgage
11 Securities Corp., Commercial Mortgage
12 Pass-Through Certificates, Series 1999-C1,

11 Defendant,
12
13 and CSFB 1999-C1 ROYALL STREET, LCC,
14
15 Defendant/Plaintiff-in-Counterclaim,

14 and
15
16 WILLIAM LANGELIER and GERALD FINEBERG,
17
18 Defendants-in-Counterclaim.

17 - - - - - x

18 DEPOSITION of JOSEPH A. POLCARI, JR., a
19 witness called by counsel for the Plaintiff/
20 Defendant-in-Counterclaim taken pursuant to the
21 applicable provisions of the Federal Rules of
22 Civil Procedure, before Toni F. Beckwith,
23 Registered Merit Reporter, CSR No. 111293 and
24 Notary Public in and for the Commonwealth of
Massachusetts, at the Offices of Bernkopf
Goodman LLP, 125 Summer Street, Boston,
Massachusetts, on Tuesday, February 28, 2006,
commencing at 9:50 a.m.

SHEA COURT REPORTING SERVICES
617 227-3097

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1 taxes that were due August 2nd to the town of
2 Canton.

3 Q. That's your recollection of the basis
4 upon which this loan was transferred to Lennar
5 as special servicer?

6 A. Yes.
7 (Exhibit 57 marked
8 for identification)

9 Q. You're looking at your counsel's copy,
10 but I'll read to you that it's Polcari 57, and
11 it's an e-mail. Can you identify this e-mail?

12 MR. FALBY: Beyond what it says?

13 MR. MCGLYNN: Excuse me?

14 MR. FALBY: Beyond what it says; are
15 you asking him if he's seen it before?

16 MR. MCGLYNN: I think that's common
17 nomenclature, but I'll ask him.

18 Q. Have you seen it before?

19 A. I don't remember seeing this before.

20 Q. Do you know who Kathryn O'Neal is?

21 A. No.

22 Q. Do you know who Larry Cowling is?

23 A. I've heard the name. I don't know
24 him.

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1 Q. Do you know who Curtis Mallegni is?

2 A. I've heard the name.

3 Q. And does this Polcari 57 refresh your
4 recollection as to the exact date when this loan
5 was transferred over to Lennar as special
6 servicer?

7 MR. FALBY: Objection. He testified
8 to lack of memory.

9 MR. MCGLYNN: He testified to August
10 19.

11 MR. FALBY: On or about August 19.

12 A. The e-mail is dated August 17. I'm
13 not sure when the actual -- what constitutes a
14 transfer, when it was made. My best
15 recollection was on or about the 19th, which
16 this would be on or about the 19th.

17 Q. If you could turn, please, to the
18 second page of this document.

19 A. Yes, sir.

20 Q. First of all, before I ask you to do
21 that, you've never seen this document before?

22 A. I said I don't remember seeing it.

23 Q. Please turn to the second page. And
24 it says, among other things, and I'm looking at

Page 35

1 the top, among other things, the servicer
2 determines that a payment default has occurred
3 or is imminent and is not likely to be cured by
4 the related mortgagor within 60 days. Do you
5 see that?

6 A. Yes.

7 Q. Is that a provision within the pooling
8 and servicing agreement which can trigger a
9 transfer of the loan from the master or the
10 servicer to the special servicer, sir?

11 MR. FALBY: Objection.

12 Q. You may answer.

13 A. That's what it says here.

14 Q. Do you have any understanding as to
15 what the conditions are that would cause a loan
16 within this pool to be transferred from Wells
17 Fargo as servicer to Lennar as special servicer,
18 Mr. Polcari?

19 A. I have very limited knowledge of that.

20 I don't really deal with the transfer part of
21 the loans.

22 Q. Would that have been something that
23 would have been handled, at least in 2004, by
24 Larry Golinsky?

Page 36

1 A. No.

2 Q. Who would that have been handled by,
3 at least as of September 2004, within Lennar?

4 A. The receiving part of it within Lennar
5 would have been handled, I believe, by Vicki
6 Taylor.

7 Q. How are special servicer assignments
8 determined within Lennar, sir, if you know?

9 A. You mean asset manager assignments?

10 Q. Yes, sir.

11 A. They are determined by Mr. Golinsky.

12 Q. And in this particular instance, he
13 was the one that determined that you would be
14 the asset manager for this particular loan?

15 MR. FALBY: Objection.

16 A. I really can't answer that. I'm not
17 sure who made the decision to assign it to me.
18 Initially it was not assigned to me. Initially
19 it was assigned to Mr. Warshaw.

20 Q. That's Mr. Job Warshaw?

21 A. That's correct.

22 Q. And you replaced Mr. Warshaw?

23 A. As asset manager for this loan, yes.

24 Q. That occurred prior to September 17,

9 (Pages 33 to 36)

Page 1

Page 3

Volume: II
 Pages: 1-243
 Exhibits: 84-109
 UNITED STATES DISTRICT COURT
 FOR THE DISTRICT MASSACHUSETTS

----- x
 BLUE HILLS OFFICE PARK, LLC,

Plaintiff/Defendant-in-Counterclaim,

v.

J.P. MORGAN CHASE BANK, as Trustee
 for the Registered Holders of
 Credit Suisse First Boston Mortgage
 Securities Corp., Commercial Mortgage
 Pass-Through Certificates, Series 1999-C1,

Defendant,

and CSFB 1999-C1 ROYALL STREET, LCC,

Defendant/Plaintiff-in-Counterclaim,

and

WILLIAM LANGELIER and GERALD FINEBERG,

Defendants-in-Counterclaim.
 ----- x

CONTINUED DEPOSITION of JOSEPH A. POLCARI, JR.,
 a witness called by counsel for the Plaintiff/
 Defendant-in-Counterclaim taken pursuant to the
 applicable provisions of the Federal Rules of
 Civil Procedure, before Toni F. Beckwith,
 Registered Merit Reporter, CSR No. 111293 and
 Notary Public in and for the Commonwealth of
 Massachusetts, at the Offices of Bernkopf
 Goodman LLP, 125 Summer Street, Boston,
 Massachusetts, on Wednesday, March 1, 2006,
 commencing at 9:30 a.m.

1 INDEX
 2 Continued
 3 Deposition of: Direct Cross Redirect Recross
 4 JOSEPH A. POLCARI, JR.
 5 By Mr. McGlynn 7 235
 6 By Mr. Falby 227
 7
 8
 9

MARKED TESTIMONY

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EXHIBITS

No.	Page
18 84	Handwritten Notes 22
19 85	Series of E-mails Bates
20	Stamped LNR04129 78
21 86	Series of E-mails Bates
22	Stamped LNR04197-04199 89
23 87	Series of E-mails Bates
24	Stamped LNR04078-04079 94

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Page 4

APPEARANCES:

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 Counsel for the Defendants/
 Plaintiff-in-Counterclaim

(Exhibits retained by Attorney McGlynn)

1 88	Series of E-mails Bates	
2	Stamped LNR04222-04223	100
3 89	Series of E-mails Bates	
4	Stamped LNR00455-00458	102
5 90	Series of E-mails Bates	
6	Stamped LNR04209-04214	103
7 91	Series of E-mails Bates	
8	Stamped LNR04215-04220	105
9 92	Series of E-mails Bates	
10	Stamped LNR04230-04232	105
11 93	Series of E-mails Bates	
12	Stamped LNR04265-04268	109
13 94	Series of E-mails Bates	
14	Stamped LNR04269-04272	109
15 95	Series of E-mails Bates	
16	Stamped LNR04273-04277	109
17 96	E-mail Bates Stamped	
18	LNR03128	111
19 97	Series of E-mails Bates	
20	Stamped LNR03104,03100,	
21	03098, 03097, WFO1413,	
22	LNR03087, 03079	112
23 98	Binder	135
24		

1 (Pages 1 to 4)

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1 that all of the debt service for any month has
2 been paid and that the escrow accounts have been
3 funded, do you have an understanding as to what
4 happens to the surplus funds?

5 A. It depends on the circumstances.

6 Q. Well, in a nondefault circumstance.

7 A. In a nondefault circumstance? Again,
8 that's part of the same question you asked
9 before. I can't remember right now what happens
10 to the funds when they get deposited into a
11 clearing account.

12 Q. Who would have the best knowledge of
13 that within the Lennar organization with respect
14 to this loan?

15 A. At one time I had the best
16 understanding of that. What I'm saying to you
17 is, looking back now, I can't remember the
18 details of that. What I can say is that -- you
19 said this a nondefault situation?

20 Q. That is correct.

21 A. Well, in the situation we have here,
22 the zoning appeal -- the filing of the zoning
23 appeal forced the cause of action. The borrower
24 should have come to us before they settled the

Page 214

1 zoning appeal. If they had come to us at that
2 time, we would never have allowed the settlement
3 of the zoning appeal and the subsequent payment
4 of \$2 million for then the money to flow
5 directly to the borrower.

6 Any discussion -- any settlement or
7 any consent we would give to the settlement of
8 the zoning appeal would have involved some
9 separate agreement whereby the proceeds would
10 have been paid -- would have been set up in a
11 reserve to cover the potential loss of the
12 tenant.

13 Q. So that would have been a requirement
14 of Lennar if it was a special servicer?

15 A. If we were the special servicer on
16 such a situation where the zoning appeal --
17 where we were being asked to consent to the
18 zoning appeal, the proceeds of the zoning appeal
19 would have been -- we would have had -- we would
20 have required them to be escrowed for the
21 potential loss of the tenant.

22 Q. Do you know whether Wells Fargo would
23 have required that?

24 A. I can't speak for Wells Fargo.

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1 Q. In a nondefault situation, do you have
2 an understanding as to whether it would be Wells
3 Fargo or some other entity that would have to
4 give its consent to the settlement of the zoning
5 appeal?

6 A. I can't answer that question.

7 Q. Turn, please, to Page 29 of your
8 answers to interrogatories.

9 A. Yes.

10 Q. Can you turn to the bottom of Page 29
11 over to Page 30?

12 A. Yes. Let me just read it, please.

13 Q. Sure.

14 A. We're talking about an interrogatory
15 in response to No. 15?

16 Q. Right. Where you state that the
17 mortgagee or the lender reasonably and
18 justifiably relied on Blue Hills' material
19 omissions to act. Do you see that?

20 A. I'm sorry. I don't.

21 Q. Perhaps --

22 A. Maybe it's the next page. Okay.

23 (Pause)

24 A. Okay.

Page 216

1 Q. Do you see that?

2 A. Yes.

3 Q. The material omissions, do you know
4 what you were referring to there?

5 A. Material omissions in my understanding
6 are Blue Hills' failure to notify the mortgagee
7 of the zoning appeal, Blue Hills' compromise of
8 that appeal in its receipt of the settlement
9 payment, done.

10 Q. Thank you. Please tell us how the
11 mortgagee reasonably -- I'm quoting from your
12 answer -- reasonably and justifiably end quote,
13 relied on these material omissions?

14 A. These answers were prepared with the
15 help of counsel. And reasonably and
16 justifiably, I didn't write those words.

17 Q. So you don't have an understanding as
18 to what they mean, sir?

19 A. To me reasonableness is somewhat of a
20 legal issue.

21 Q. I understand. I'm just asking if you
22 have an understanding.

23 A. I don't at this moment.

24 Q. Okay. And you did sign these answers

54 (Pages 213 to 216)

EXHIBIT 12

Gilbert W. Stone
Volume 1 - February 9, 2006

Exhibits: 1 - 12 Volume 1, Pages 1 - 167

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 05-CV-10506 (WJY)

BLUE HILLS OFFICE PARK LLC
Plaintiff, Defendant-in-Counterclaim

vs.

J.P. MORGAN CHASE BANK, et al.

Defendant

(Complete caption on next page.)

30(b)(6) DEPOSITION OF BLUE HILLS OFFICE PARK LLC

BY GILBERT W. STONE

Thursday, February 9, 2006, 10:05 a.m.

DLA Piper Rudnick Gray Cary US LLP

One International Place, 21st Floor

Boston, Massachusetts

----- Reporter: David A. Arsenault, RPR -----

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FARMER ARSENAULT BROCK LLC

bb347439-5e5b-4e1b-8eb2-5a18c9c654d3

9 (Pages 30 to 33)

Gilbert W. Stone
Volume 1 - February 9, 2006

<p style="text-align: right;">30</p> <p>1 responsible for overseeing the financial</p> <p>2 transactions between Fineberg Management and the</p> <p>3 various lenders?</p> <p>4 A. I did not have conversations generally with</p> <p>5 them. My duty was to report to them the quarterly</p> <p>6 statement.</p> <p>7 Q. When you say them, your duty was to report</p> <p>8 to the lenders the quarterly statement?</p> <p>9 A. Yes.</p> <p>10 Q. Of what?</p> <p>11 A. The financial statement, the general</p> <p>12 ledger.</p> <p>13 Q. Was there a single-purpose entity that was</p> <p>14 set up to own each of the different properties?</p> <p>15 A. I didn't understand you.</p> <p>16 Q. For each of the properties owned by</p> <p>17 Fineberg Management, was there actually a</p> <p>18 single-purpose entity set up that owned that</p> <p>19 property?</p> <p>20 A. Yes.</p> <p>21 Q. So Fineberg Management managed the</p> <p>22 buildings that were owned by these single-purpose</p> <p>23 entities? Is that how it worked?</p> <p>24 A. The single entity? I'm not sure what</p>	<p style="text-align: right;">32</p> <p>1 operation of the hotels owned by Fine Hotels?</p> <p>2 A. No.</p> <p>3 Q. Those are managed independently by Fine</p> <p>4 Hotels?</p> <p>5 A. Yes.</p> <p>6 Q. Does Fine Hotels still exist?</p> <p>7 A. Yes.</p> <p>8 Q. Still six hotels?</p> <p>9 A. Yes.</p> <p>10 Q. The operations are separate from Fineberg</p> <p>11 Management?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have any ownership in Blue Hills</p> <p>14 Office Park LLC?</p> <p>15 A. No.</p> <p>16 Q. Who owns it?</p> <p>17 A. Gerald Fineberg.</p> <p>18 Q. Do you know if anyone else has an interest</p> <p>19 in it?</p> <p>20 A. Bill Langelier.</p> <p>21 Q. Anyone else?</p> <p>22 A. Dan Frank.</p> <p>23 Q. Anyone else?</p> <p>24 A. Michelle Fineberg, Gary Fineberg. There's</p>
<p style="text-align: right;">31</p> <p>1 you're saying.</p> <p>2 Q. Are you familiar with the concept of a</p> <p>3 single-purpose entity when it comes to real estate,</p> <p>4 that is, an entity set up solely for the purpose of</p> <p>5 owning one property?</p> <p>6 A. There are those, yes.</p> <p>7 Q. And were each of the properties that you</p> <p>8 listed before owned by a single-purpose entity?</p> <p>9 A. Yes.</p> <p>10 Q. What was the relationship, if any, between</p> <p>11 those single-purpose entities and Fineberg</p> <p>12 Management?</p> <p>13 MR. McGLYNN: Objection as to form.</p> <p>14 Q. You can answer.</p> <p>15 MR. McGLYNN: You can answer.</p> <p>16 A. I'm not sure. I'm not sure what you mean</p> <p>17 by that.</p> <p>18 Q. The Blue Hills Office Park, for example,</p> <p>19 was owned by Blue Hills Office Park LLC, correct?</p> <p>20 A. Correct.</p> <p>21 Q. What was the relationship between Blue</p> <p>22 Hills Office Park LLC and Fineberg Management?</p> <p>23 A. Fineberg Management oversaw the operation.</p> <p>24 Q. Does Fineberg Management also oversee the</p>	<p style="text-align: right;">33</p> <p>1 an Amy Badger.</p> <p>2 Q. Anyone else?</p> <p>3 A. No.</p> <p>4 Q. Do you have oversight responsibilities for</p> <p>5 the accounting records of Blue Hills Office Park</p> <p>6 LLC?</p> <p>7 A. Yes.</p> <p>8 Q. Similarly, do you have responsibility for</p> <p>9 the accounting records of the other single-purpose</p> <p>10 entities that own the various properties managed by</p> <p>11 Fineberg Management?</p> <p>12 A. Yes.</p> <p>13 Q. Do each of those entities have separate</p> <p>14 books and records?</p> <p>15 A. Yes.</p> <p>16 Q. So Blue Hills Office Park LLC, for example,</p> <p>17 has its own set of accounting papers, including an</p> <p>18 accounts payable ledger and accounts receivable</p> <p>19 ledger and general ledger?</p> <p>20 A. Yes.</p> <p>21 Q. Do you have people who work for you on an</p> <p>22 accounting staff?</p> <p>23 A. Yes.</p> <p>24 Q. How many?</p>

10 (Pages 34 to 37)

Gilbert W. Stone
Volume 1 - February 9, 2006

<p style="text-align: right;">34</p> <p>1 A. Two. Cheryl Reardon.</p> <p>2 Q. Who else?</p> <p>3 A. Deb Griffin.</p> <p>4 Q. From 1999 through 2004, was there anybody</p> <p>5 else who worked for you on your accounting staff?</p> <p>6 A. Paul Halloran.</p> <p>7 Q. What was his position?</p> <p>8 A. Accounting clerk.</p> <p>9 Q. What years was he employed by Fineberg</p> <p>10 Management?</p> <p>11 A. I don't know the exact number.</p> <p>12 Q. Can you give me the approximate dates of</p> <p>13 his employment?</p> <p>14 A. He probably goes back -- I shouldn't say --</p> <p>15 somewhere around 1990 to 2001.</p> <p>16 Q. Did he have responsibility for the</p> <p>17 accounting of Blue Hills Office Park LLC?</p> <p>18 A. He did the work. He did the entries and</p> <p>19 recorded the entries that needed to be done.</p> <p>20 Q. And who took over recording the entries and</p> <p>21 doing the work for Blue Hills Office Park when he</p> <p>22 left in 2001?</p> <p>23 A. I did.</p> <p>24 Q. Do you remember the month in 2001 that you</p>	<p style="text-align: right;">36</p> <p>1 Q. Of both?</p> <p>2 A. Fine Hotels and Fineberg Management?</p> <p>3 Well --</p> <p>4 MR. McGLYNN: I don't want you to</p> <p>5 speculate. If you don't know, say you don't know.</p> <p>6 A. Gerald Fineberg is the owner. Dan Frank is</p> <p>7 the president of the two.</p> <p>8 Q. But Mr. Donovan reports to Mr. Fineberg,</p> <p>9 not to Mr. Frank?</p> <p>10 A. To the best of my knowledge.</p> <p>11 Q. From 1999 to 2001 when Paul Halloran was</p> <p>12 still there, what was your involvement with Blue</p> <p>13 Hills Office Park LLC?</p> <p>14 A. I oversaw his work.</p> <p>15 Q. So what did that mean? Did you check it</p> <p>16 periodically, every day, once in a while?</p> <p>17 MR. McGLYNN: Objection.</p> <p>18 Q. Only on Sundays?</p> <p>19 MR. McGLYNN: Objection.</p> <p>20 A. Monthly.</p> <p>21 Q. During the period that he was doing the</p> <p>22 accounting work for Blue Hills, was he the one who</p> <p>23 had contact with the mortgage lender for Blue Hills?</p> <p>24 A. He had contact with them, yes.</p>
<p style="text-align: right;">35</p> <p>1 took over?</p> <p>2 A. September.</p> <p>3 Q. Did you continue to do the accounting work</p> <p>4 for Blue Hills Office Park in September 2001 through</p> <p>5 November 2004?</p> <p>6 A. Yes.</p> <p>7 Q. And to the extent there's been accounting</p> <p>8 work since for that entity, have you done it?</p> <p>9 A. Yes.</p> <p>10 Q. Who is Carol Falvey?</p> <p>11 A. Administrative assistant.</p> <p>12 Q. To whom?</p> <p>13 A. Joe Donovan.</p> <p>14 Q. Mr. Donovan's position is what?</p> <p>15 A. Chief financial officer.</p> <p>16 Q. Of Fineberg Management?</p> <p>17 A. The overall chief financial officer of Fine</p> <p>18 Hotels and Fineberg Management.</p> <p>19 Q. Do you report to him?</p> <p>20 A. Yes.</p> <p>21 Q. Who does he report to?</p> <p>22 A. Gerald Fineberg.</p> <p>23 Q. Does Mr. Fineberg have a title?</p> <p>24 A. President.</p>	<p style="text-align: right;">37</p> <p>1 Q. Did you have any contact with them when he</p> <p>2 was there?</p> <p>3 A. Minimal, yes.</p> <p>4 Q. What contact did you have with the lender</p> <p>5 for Blue Hills when Paul Halloran was still</p> <p>6 employed?</p> <p>7 A. The payment of the real estate taxes.</p> <p>8 Q. Did you have any other contact with the</p> <p>9 lender while Paul Halloran was employed?</p> <p>10 A. Not that I'm aware of.</p> <p>11 MR. FALBY: Off the record.</p> <p>12 (Discussion off the record.)</p> <p>13 MR. McGLYNN: I want to let you know,</p> <p>14 because you're starting to get into it a little bit,</p> <p>15 we have designated Mr. Stone as a partial designee</p> <p>16 for 30(b)(6) purposes for Topics 4 and 11 on your</p> <p>17 30(b)(6) depo notice to Blue Hills Office Park LLC,</p> <p>18 generally described as property tax payments,</p> <p>19 property tax escrows. 11 is monies received by Blue</p> <p>20 Hills on account of the property from September 14,</p> <p>21 1999 to November 19, 2004. He's a partial designee</p> <p>22 for those two topics.</p> <p>23 MR. FALBY: Who is the other designee?</p> <p>24 MR. McGLYNN: I believe it is going to</p>

12 (Pages 42 to 45)

Gilbert W. Stone
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<p style="text-align: right;">42</p> <p>1 Q. Is it easier to think of it in terms of 2 number of hours per week? 3 A. It was just part of the job and things were 4 done when they needed to be done. They were 5 addressed when they came up, the financial 6 statement, the reconciliations were done. If 7 something was there, we looked at it. 8 Q. From 2001 through 2004 you were doing the 9 actual accounting work for Blue Hills yourself, 10 right? 11 A. Myself and staff, yes. 12 Q. I thought you said when Paul left you took 13 over and did the work. 14 A. I did not do the accounts payable. 15 Q. Who did that? 16 A. Cheryl Reardon, my staff. 17 Q. Who else worked on Blue Hills accounting 18 other than you and Cheryl Reardon during the period 19 September 2001 through September 2004? 20 A. That was it. 21 Q. Did Cheryl do anything other than accounts 22 payable? 23 A. No. 24 Q. What does it mean to do the accounts</p>	<p style="text-align: right;">44</p> <p>1 A. The checks were mailed to us and we 2 deposited them and recorded them to the bank. 3 Q. And that's opposed to what with respect to 4 Blue Hills? How was it handled with respect to Blue 5 Hills? 6 A. The checks were mailed into a lockbox at 7 Banknorth. And then they sent me copies of what 8 they received. That's what I made entries from. 9 Q. But in either event, did you record the 10 receipts? 11 A. On Blue Hills Office Park, yes. 12 Q. Did you record the receipts on the other 13 properties? 14 A. That was not my -- no, I don't do that. 15 Q. Who did that? 16 A. Deb Griffin. 17 Q. Did Cheryl Reardon do the accounts payable 18 for all of the entities? 19 A. Yes. 20 Q. And Deb Griffin did accounts receivable for 21 all of the entities except Blue Hills? 22 A. Yes. 23 Q. What did you do with respect to the 24 entities other than Blue Hills?</p>
<p style="text-align: right;">43</p> <p>1 payable; what did it mean? 2 A. The recording of the invoices and the 3 payment of the invoices. 4 Q. What did you do with respect to Blue Hills 5 from September 2001 through November 2004? 6 A. The recording of the receipts, the general 7 ledger, the account reconciliations. 8 Q. Did you have similar responsibilities to 9 the other single-purpose entities that owned the 10 other properties that Figeberg Management managed? 11 A. Yes. Not the receipts. 12 Q. So from 2001 through 2004, approximately 13 how many different sets of books and records were 14 you responsible for, given the number of different 15 entities? 16 A. Including residential? 17 Q. Yes, everything. 18 A. 50? 19 Q. With respect to those 50, did you do the 20 same types of things you did for Blue Hills? 21 A. The receipts were handled differently on 22 the other properties. 23 Q. How were they handled on the other 24 properties?</p>	<p style="text-align: right;">45</p> <p>1 MR. McGLYNN: Objection to the form. 2 Q. What work did you do for the other entities 3 other than Blue Hills? 4 A. The account reconciliations, the bank 5 reconciliations, the general ledger, review the 6 accounts payable, review the accounts receivable. 7 Q. Is it fair to say that your time was more 8 or less evenly divided among the various 50 9 entities? 10 A. I think Blue Hills was minimal. 11 Q. You spent a minimal amount of time on Blue 12 Hills? 13 A. It wasn't a lot. 14 Q. Less time than some of the other entities? 15 A. Yes. 16 Q. Why? Why did it take less time? 17 A. There were just a couple of checks that 18 came in a month. The money was transferred to Wells 19 Fargo. I made sure that it was done. The general 20 ledger was fairly simple. 21 Q. Did you handle the real estate tax payments 22 and the insurance premium payments for the other 50 23 entities, the other 49 entities? 24 A. The others, most of the others there's an</p>

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<p style="text-align: right;">94</p> <p>1 Q. When did EquiServe actually leave?</p> <p>2 A. The notice was July 31, 2004. I believe</p> <p>3 they stayed a half month.</p> <p>4 Q. When you say the notice was July 31, 2004,</p> <p>5 do you mean that the notice said they would be</p> <p>6 leaving on that day?</p> <p>7 A. Yes.</p> <p>8 Q. The notice was obviously in advance of that</p> <p>9 day, correct?</p> <p>10 A. Yes.</p> <p>11 Q. There was a tax payment due on -- strike</p> <p>12 that. There was a tax payment due at the beginning</p> <p>13 of August 2004, correct?</p> <p>14 A. Yes.</p> <p>15 Q. As that date approached, did you have any</p> <p>16 discussion with anybody internally at Blue Hills or</p> <p>17 Fineberg Management about how the real estate tax</p> <p>18 payment due in August 2004 would be funded?</p> <p>19 A. There must have been. I don't know an</p> <p>20 exact conversation, but yes.</p> <p>21 Q. What's your general memory of that</p> <p>22 conversation or conversations?</p> <p>23 MR. McGLYNN: Again, I don't want you to</p> <p>24 speculate. If you recall, fine. If you don't</p>	<p style="text-align: right;">96</p> <p>1 A. No.</p> <p>2 Q. Do you ever keep notes of conversations?</p> <p>3 MR. McGLYNN: You mean in his entire</p> <p>4 life?</p> <p>5 A. Sometimes, yes.</p> <p>6 Q. What prompts you to keep a note as opposed</p> <p>7 to not keeping one?</p> <p>8 A. To have a record of who I talked to or who</p> <p>9 I left a message for in case they came back to me</p> <p>10 and said we never heard from you.</p> <p>11 Q. Does your Blue Hills file contain any</p> <p>12 handwritten notes by you about conversations you've</p> <p>13 had with folks at Wells Fargo?</p> <p>14 A. There are some in there. Not about the</p> <p>15 content; just that I talked with someone or left a</p> <p>16 message for someone.</p> <p>17 Q. And what notes did you make? We haven't</p> <p>18 seen them, which is why I'm asking you. If I had</p> <p>19 seen them, I would show them to you.</p> <p>20 A. Just Post-its.</p> <p>21 Q. Do you recall any particular notes you made</p> <p>22 about any particular conversation?</p> <p>23 A. No.</p> <p>24 Q. Do you recall any of the names or dates of</p>
<p style="text-align: right;">95</p> <p>1 recall, there's no crime in telling people that too.</p> <p>2 A. I don't know the exact conversation.</p> <p>3 Q. You have some memory. I'm entitled to it.</p> <p>4 What's your memory, however vague, of what the</p> <p>5 conversation was?</p> <p>6 A. The money was not there and it wasn't going</p> <p>7 to be paid.</p> <p>8 Q. Do you recall who that discussion was with?</p> <p>9 A. Joe Donovan.</p> <p>10 Q. Do you recall any other content of that</p> <p>11 discussion?</p> <p>12 A. No.</p> <p>13 Q. As the date of the August tax payment</p> <p>14 approached, did you have any discussion with anybody</p> <p>15 at Wells Fargo about that tax payment?</p> <p>16 A. Not that I remember.</p> <p>17 Q. Did Wells Fargo send an escrow account</p> <p>18 shortage notice in July 2004 as they usually did the</p> <p>19 month before payment was due?</p> <p>20 A. To the best of my knowledge, they did.</p> <p>21 Q. Did you respond to that notice?</p> <p>22 A. Not that I'm aware of.</p> <p>23 Q. Do you typically keep notes of</p> <p>24 conversations?</p>	<p style="text-align: right;">97</p> <p>1 the notes that you made?</p> <p>2 A. No.</p> <p>3 Q. I take it you didn't see any handwritten</p> <p>4 notes that prompted you to recall speaking to</p> <p>5 anybody at Wells Fargo about real estate tax</p> <p>6 payments in July 2004 when you went through your</p> <p>7 file?</p> <p>8 A. I don't believe so, no.</p> <p>9 Q. Did you see any documents when you met with</p> <p>10 Mr. McGlynn that prompted any recollection about</p> <p>11 conversations with Wells Fargo in July 2004?</p> <p>12 A. I saw the document. I don't recall the</p> <p>13 conversation.</p> <p>14 Q. What document did you see?</p> <p>15 A. It appeared to be a note written by someone</p> <p>16 from Wells Fargo stating that he had a conversation</p> <p>17 with Gil Stern. I don't recall that.</p> <p>18 Q. Do you recall talking to Brent Lloyd in</p> <p>19 particular about real estate tax payments in July</p> <p>20 '04?</p> <p>21 A. I don't recall.</p> <p>22 Q. Did you have any conversations with Wells</p> <p>23 Fargo in August 2004?</p> <p>24 A. No.</p>

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<p style="text-align: right;">118</p> <p>1 conversations with Brent Lloyd, correct?</p> <p>2 A. Yes.</p> <p>3 Q. I guess the point is, you may have had such</p> <p>4 a conversation but you don't recall it?</p> <p>5 A. Yes.</p> <p>6 Q. Let me show you another Wells Fargo</p> <p>7 document that is similar, Bates-stamped WF 1746.</p> <p>8 (Marked, Exhibit 6, WF 1746, notes</p> <p>9 maintenance document.)</p> <p>10 Q. Have you seen Exhibit 6 before in preparing</p> <p>11 for your deposition?</p> <p>12 A. I don't recall this one, no.</p> <p>13 Q. Reading it, does it refresh your memory as</p> <p>14 to any conversations that you had with Brent Lloyd</p> <p>15 in July 2004?</p> <p>16 A. No.</p> <p>17 Q. So you don't recall having the conversation</p> <p>18 that's described in Exhibit 6?</p> <p>19 A. No, I don't.</p> <p>20 Q. Can you state with certainty that you did</p> <p>21 not have such a conversation, that is, can you</p> <p>22 unequivocally deny it?</p> <p>23 A. No.</p> <p>24 Q. So the point is, you may have had such a</p>	<p style="text-align: right;">120</p> <p>1 MR. FALBY: I'm asking for his memory.</p> <p>2 A. I don't believe we talked about whether</p> <p>3 they would pay it or not.</p> <p>4 Q. Do you recall talking about whether they</p> <p>5 would -- strike that. Do you recall talking about</p> <p>6 whether the taxes and the principal and interest</p> <p>7 qualified to be paid from the reserve accounts?</p> <p>8 A. I don't believe so.</p> <p>9 Q. These documents I've just shown you,</p> <p>10 Exhibits 5 and 6, talk about conditions under which</p> <p>11 taxes could be paid from the escrow account. Did</p> <p>12 you see that when you read them?</p> <p>13 MR. McGLYNN: Objection.</p> <p>14 A. Yes.</p> <p>15 Q. Did you have any conversation with</p> <p>16 Mr. Donovan about conditions under which tax</p> <p>17 payments could be made from the escrow account?</p> <p>18 A. I don't believe so.</p> <p>19 Q. Did you have any discussions with anybody</p> <p>20 at Blue Hills or Fineberg Management whether tax</p> <p>21 payments, principal and interest as of early August</p> <p>22 could be paid from the reserve accounts?</p> <p>23 A. No.</p> <p>24 Q. Or any conditions that would have to be</p>
<p style="text-align: right;">119</p> <p>1 conversation but you don't recall the conversation?</p> <p>2 A. That's correct.</p> <p>3 Q. You mentioned that Joe Donovan asked you</p> <p>4 for amounts so that he could request payment from</p> <p>5 the reserve account. I think you said no, but let</p> <p>6 me ask you again. Did you discuss with Mr. Donovan</p> <p>7 whether monies could be taken out of the reserve</p> <p>8 accounts to pay the taxes?</p> <p>9 MR. McGLYNN: Objection. That has been</p> <p>10 asked and answered.</p> <p>11 A. Not until he was preparing that letter,</p> <p>12 yes...</p> <p>13 Q. So at that point can you tell me what the</p> <p>14 discussion was?</p> <p>15 A. He was going to request that Wells Fargo</p> <p>16 meets the requirements from reserves.</p> <p>17 Q. Did you discuss whether, when he requested</p> <p>18 that, Wells Fargo would do it or not?</p> <p>19 A. I don't believe so.</p> <p>20 Q. In other words, did you discuss whether you</p> <p>21 expected Wells Fargo to say yes or no to the</p> <p>22 request?</p> <p>23 MR. McGLYNN: Objection. Are you asking</p> <p>24 him to speculate?</p>	<p style="text-align: right;">121</p> <p>1 satisfied before they could be paid from the escrow</p> <p>2 accounts?</p> <p>3 A. No.</p> <p>4 Q. Did you ever hear anybody else discussing</p> <p>5 that?</p> <p>6 A. No.</p> <p>7 Q. Do you know anything about that?</p> <p>8 A. Anything about?</p> <p>9 Q. About the conditions under which payments</p> <p>10 can come out of the reserve accounts.</p> <p>11 A. I didn't know at that time, but I have</p> <p>12 since learned that funds could be available.</p> <p>13 Q. How did you learn that?</p> <p>14 MR. McGLYNN: I'll instruct you -- if</p> <p>15 you learned it from counsel, I'll instruct you not</p> <p>16 to answer.</p> <p>17 Q. If Peter told you that, it is not a</p> <p>18 credible source. But if anybody else did -- did you</p> <p>19 hear about it from anybody other than that scoundrel</p> <p>20 sitting there, saying that with a smile, pointing to</p> <p>21 Mr. McGlynn?</p> <p>22 A. No.</p> <p>23 MR. McGLYNN: I may be a scoundrel, but</p> <p>24 I'm Gil's scoundrel.</p>

EXHIBIT 13

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<p style="text-align: right;">30</p> <p>1 voice-mail, correct?</p> <p>2 A. Yes.</p> <p>3 Q. And did you subsequently have a discussion</p> <p>4 with Mr. Donovan?</p> <p>5 A. Yes.</p> <p>6 Q. Was that over the phone?</p> <p>7 A. Yes.</p> <p>8 Q. And who initiated that call, you or he?</p> <p>9 A. I don't recall. You know, I know I called</p> <p>10 him -- I made the initial call to him; and whether,</p> <p>11 you know, he called back and left me a message and</p> <p>12 then I called him back, or he called back and got</p> <p>13 me, I don't recall, but we did have a conversation.</p> <p>14 Q. And during your discussion with</p> <p>15 Mr. Donovan, can you tell us what you said and he</p> <p>16 said?</p> <p>17 A. I recall a few things. You know, my</p> <p>18 initial inquiry was how could I get into the</p> <p>19 property and do the tour that I needed to do to do</p> <p>20 the appraisal. He gave me Larry Needle's name and</p> <p>21 number, and I took that down. And then we -- I had</p> <p>22 asked him what was going on with the property,</p> <p>23 because I knew the situation with which Lennar</p> <p>24 usually gets involved in these things, and that's</p>	<p style="text-align: right;">32</p> <p>1 MR. FALBY: Objection. I'm objecting to</p> <p>2 the characterization. Obviously, you can tell what</p> <p>3 you knew about the property.</p> <p>4 A. I knew foreclosure was a possibility in</p> <p>5 situations such as this. I knew that they were -- I</p> <p>6 believe someone -- you know, I did hear the term</p> <p>7 "default," meaning no payment of the mortgage</p> <p>8 amount, and that was the extent of my knowledge. I</p> <p>9 did not -- you know, foreclosure is the actual act</p> <p>10 of transferring the property to another entity, and</p> <p>11 that had not occurred.</p> <p>12 Q. You knew at the time that you were</p> <p>13 performing these appraisal services that foreclosure</p> <p>14 sale advertisements had already been published in</p> <p>15 the newspaper?</p> <p>16 MR. FALBY: Objection.</p> <p>17 Q. You may answer.</p> <p>18 A. No, actually, I did not know that.</p> <p>19 Q. When you do an appraisal, you do some</p> <p>20 search of the records at the Registry of Deeds,</p> <p>21 don't you?</p> <p>22 A. Yes.</p> <p>23 Q. In fact, attached to your report is a</p> <p>24 property description?</p>
<p style="text-align: right;">31</p> <p>1 when he -- we talked a little bit about the</p> <p>2 difficulties they were having with the property in</p> <p>3 terms of it being vacant and not much, you know,</p> <p>4 leasing activity they had seen with their brokers</p> <p>5 and they hadn't been successful in leasing it up and</p> <p>6 how much it was costing to hold onto it, and that's</p> <p>7 when he told me that they were going to give the</p> <p>8 keys back to Lennar.</p> <p>9 Q. And you recall Mr. Donovan saying that?</p> <p>10 A. Yes.</p> <p>11 Q. And you didn't make any notes of that</p> <p>12 discussion, did you?</p> <p>13 A. No, no. With Mr. Donovan -- he was the</p> <p>14 initial contact, and I wasn't asking him any</p> <p>15 physical descriptive information on the building or</p> <p>16 anything because Larry Needle, the property manager,</p> <p>17 was going to give me that from what I understood.</p> <p>18 Q. Did you report the substance of your</p> <p>19 discussion to Cynthia Smith?</p> <p>20 A. No.</p> <p>21 Q. Did you report it to Joe Polcari?</p> <p>22 A. No.</p> <p>23 Q. You knew at the time that this property was</p> <p>24 in foreclosure?</p>	<p style="text-align: right;">33</p> <p>1 A. Yes.</p> <p>2 Q. Did you get that from the Registry of</p> <p>3 Deeds?</p> <p>4 A. Property description, meaning a legal</p> <p>5 description of the site the property is located on,</p> <p>6 you know, we usually ask for it from the borrower or</p> <p>7 the owner. They usually have it attached to a deed</p> <p>8 that they have had in their possession. Sometimes</p> <p>9 we get it from them, and sometimes we do get it from</p> <p>10 the Registry of Deeds.</p> <p>11 Q. Do you know whether you got it from the</p> <p>12 Registry of Deeds in this case?</p> <p>13 A. I don't recall.</p> <p>14 Q. You do recall going to the registry or</p> <p>15 sending somebody from your office to the registry to</p> <p>16 look up the status of the title of this property?</p> <p>17 A. With the information on-line now, sometimes</p> <p>18 we don't go to the registry, we do an on-line</p> <p>19 search.</p> <p>20 Q. You would agree with me if foreclosure had</p> <p>21 been underway, there would be some kind of notice</p> <p>22 recorded against this property at the Registry of</p> <p>23 Deeds that foreclosure proceedings had started,</p> <p>24 correct?</p>

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<p>34</p> <p>1 MR. FALBY: Objection.</p> <p>2 A. Again, I just wasn't informed of any</p> <p>3 foreclosure action underway by Lennar, and I didn't</p> <p>4 do a specific search for that.</p> <p>5 Q. But generally, you knew that when you got</p> <p>6 an assignment from Lennar as a special servicer,</p> <p>7 that either the loan for the property was in default</p> <p>8 or there was some other trouble, I think you</p> <p>9 characterized it as, involving the property,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And did either Cynthia or Polcari tell you</p> <p>13 about any particular purpose for which they needed</p> <p>14 your appraisal?</p> <p>15 A. Not specifically. When -- in the past,</p> <p>16 when I have done work for Lennar, you know, they</p> <p>17 used my value to -- from my understanding, they used</p> <p>18 my value to make a decision whether to foreclose,</p> <p>19 whether to work out the loan, whether to extend the</p> <p>20 terms of the loan; and it's a step in a decision-</p> <p>21 making process.</p> <p>22 Q. Did you have that specific understanding</p> <p>23 with respect to this particular appraisal,</p> <p>24 Mr. Stotz?</p>	<p>36</p> <p>1 this particular appraisal?</p> <p>2 A. Not with Lennar.</p> <p>3 Q. You indicated that you had -- this was a</p> <p>4 telephone conversation that you had with Joe</p> <p>5 Donovan, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And he was the one that you recall telling</p> <p>8 you the owner was going to, quote, "give back the</p> <p>9 keys"?</p> <p>10 A. Yes.</p> <p>11 Q. And you recall that specifically?</p> <p>12 A. Yes. I recall it specifically because it</p> <p>13 surprised me. In all the work I had done for Lennar</p> <p>14 before, I had never had an owner come out and admit</p> <p>15 that to me.</p> <p>16 Q. And you will agree with me that this</p> <p>17 comment does not appear anywhere in your 100-and-</p> <p>18 some-odd page October 18, 2004 report, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And it does not appear in any</p> <p>21 communications, notes, correspondence, memoranda,</p> <p>22 meetings of minutes, summaries of telephone</p> <p>23 conversations in connection with this appraisal</p> <p>24 assignment, correct?</p>
<p>35</p> <p>1 A. Yes.</p> <p>2 Q. And was that explained to you by Ms. Smith?</p> <p>3 A. Yes, maybe not in this context on this</p> <p>4 property, but on previous properties we have</p> <p>5 appraised for them.</p> <p>6 Q. And did you have -- relative to your</p> <p>7 appraisal services for Lennar with respect to this</p> <p>8 property, did you have any discussions with</p> <p>9 Mr. Polcari?</p> <p>10 A. I don't recall specifically whether I had</p> <p>11 discussions on this property. I have spoken with</p> <p>12 Joe Polcari before because he's the asset manager</p> <p>13 for a number of their properties in the Northeast,</p> <p>14 and I don't recall if it was on this specific</p> <p>15 property or another one.</p> <p>16 Q. All right. Do you recall having any</p> <p>17 specific discussions with Cynthia Smith concerning</p> <p>18 this particular appraisal?</p> <p>19 A. Again, you know, I discuss every property I</p> <p>20 appraise with her. Typically, with her it's more</p> <p>21 due-date-oriented; or if there's any issues that</p> <p>22 come up in her review of my work, we discuss those.</p> <p>23 Q. Do you recall having any other discussions</p> <p>24 with any other representatives of Lennar concerning</p>	<p>37</p> <p>1 A. That's right.</p> <p>2 Q. And it only appears for the first time in</p> <p>3 your rebuttal report, correct?</p> <p>4 MR. FALBY: In writing, you mean?</p> <p>5 MR. MCGLYNN: In writing.</p> <p>6 A. Yes.</p> <p>7 Q. And how long did your discussion with --</p> <p>8 had you known Joe Donovan?</p> <p>9 MR. FALBY: Objection, asked and</p> <p>10 answered. You can tell him again.</p> <p>11 A. I had known him through a previous</p> <p>12 appraisal I did on another one of their properties.</p> <p>13 I did the appraisal for a financing institution. He</p> <p>14 was my client contact at that point.</p> <p>15 Q. Which financing institution?</p> <p>16 A. People's Bank of Connecticut.</p> <p>17 Q. Do you recall which property it was?</p> <p>18 A. The Holiday Inn in Mansfield.</p> <p>19 Q. Mansfield, Mass.?</p> <p>20 A. Massachusetts.</p> <p>21 Q. Was this a property that was, quote, "in</p> <p>22 trouble"?</p> <p>23 A. Not to my knowledge.</p> <p>24 Q. This was an appraisal relating to some</p>

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<p style="text-align: right;">Page 86</p> <p>1 subject building. And then subsequent to that we 2 went to the exterior, and I think we drove around it 3 because it was -- you know, it's a pretty big 4 building. So we drove around it and toured the 5 exterior of the building as well. 6 Q. Do you know what time of day it was? 7 A. I believe it was morning, maybe 9 o'clock, 8 9:30. 9 Q. And you drove -- where were you coming 10 from? 11 A. Probably the city, from our offices. 12 MR. FALBY: Use your memory. Don't 13 guess. 14 THE WITNESS: Okay. 15 A. My best recollection is we came from the 16 city. 17 Q. All right. So you come down what, the 18 Expressway, and then up 95? 19 A. I don't recall which direction we went, if 20 it was that way or out the Turnpike or down 128, 21 which would be the longer way, but... 22 Q. Did you get stuck in any traffic jams, or 23 did you experience any congestion? 24 A. I think the normal backups -- if it was --</p>	<p style="text-align: right;">Page 88</p> <p>1 A. No, it was an adjacent property that was 2 existing at the time of the appraisal. 3 Q. And you didn't factor in any congestion 4 that would have reportedly resulted from the 5 presence of this garage next door? 6 A. No, not at this time, no. 7 Q. But you did in your rebuttal report -- I'm 8 sorry, you did in your expert report, correct? 9 MR. FALBY: Objection to that 10 characterization of what he did in his report. 11 MR. MCGLYNN: Well, we will get to that. 12 Q. But you will agree with me, sir, that in 13 your expert report you have indicated that there 14 would be a decline, a diminution in the value of 150 15 Royall because of the existence of the garage; isn't 16 that correct? 17 A. Yes, I stated that, yes. 18 Q. But you can't quantify it? 19 A. Right. 20 Q. And nothing had changed in terms of the 21 site or the building, the garage on the adjacent 22 site, between the time that you inspected the 23 property on October 18, 2004, and the date that you 24 issued your expert report, correct?</p>
<p style="text-align: right;">Page 87</p> <p>1 MR. FALBY: If you don't remember which 2 way you came -- 3 A. Yeah. So, no, I don't recall. 4 Q. You toured the exterior of the building? 5 A. Yes. 6 Q. Did you look next door at 250 Royall? 7 A. Yes. 8 Q. Did you see the garage? 9 A. Yes. 10 Q. How come that's not mentioned here? 11 A. It's not part of the subject property. 12 Q. Okay. How come -- you will agree with me 13 that in your October 18, 2004 report, there is not 14 one single mention of the garage over at 250 Royall, 15 correct? 16 A. I can't say that with certainty, if it was 17 part of the property there. I'm not sure if it was 18 mentioned in the sale write-up or the information 19 used in the sales comparison approach. I mean, I 20 can spend some time looking for it, but -- 21 Q. You can do that, but you can do that at the 22 break. But you will agree with me that the presence 23 of the garage did not factor into the value that you 24 arrived at as of October 18, 2004, correct?</p>	<p style="text-align: right;">Page 89</p> <p>1 MR. FALBY: I'll object. I didn't 2 understand that question. You can answer. 3 A. Okay. That's correct, but in my expert 4 report I was asked to give an opinion of the impact 5 of the construction of the garage, since it was 6 existing at the time of the October 2004 report, it 7 was there, and I was not -- it in no way -- it 8 existed at the time, and I appraised the subject 9 property with that garage there, and that was it. 10 In my expert report, I was asked to give 11 an opinion on the impact of the construction of the 12 garage. So you look at the subject property before 13 it was built and after it was built. It's a 14 separate exercise. 15 Q. I'm not sure I understand what you are 16 saying. Are you saying you are -- putting aside 17 your modification valuation, your valuation as of 18 October 18, 2004, was that this building was worth 19 15 million bucks? 20 A. Yes. 21 Q. And you considered all those things that 22 needed to be considered in order to arrive at that 23 figure of 15 million, correct? 24 A. Yes.</p>

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<p style="text-align: right;">Page 90</p> <p>1 Q. And you indicate on page 35 that there were 2 no physical factors that are noted that would 3 negatively impact on the value, correct? 4 A. Beyond what was appraised. 5 Q. Where does it say "beyond what was 6 appraised"? 7 A. From my point of view, it's understood in 8 the statement. 9 Q. I understand, but, you know, you will agree 10 with me that the reader may not have the benefit of 11 what's in your mind, only what you have written, 12 correct? 13 MR. FALBY: Objection. 14 A. Correct. 15 Q. Now, sir, in your expert report you're 16 saying that the presence of the garage would result 17 in some unquantified reduction in the value of 150 18 Royall Street, correct? 19 A. Yes. 20 Q. Now, just so I understand what you are 21 saying, you mean that it would be a reduction in the 22 value that you determined as of October 18, 2004, to 23 be \$15 million? 24 A. No.</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Because it was existing. It's part of the 2 office park, it's part of the neighborhood. It -- 3 Q. Have you finished your answer? 4 A. Yes. 5 Q. All right. But you will agree with me that 6 you don't point out the presence of this garage in 7 your October 18, 2004 report, correct? 8 MR. FALBY: Objection. I think that you 9 have asked that and he's answered it and he said he 10 thinks he talks about it in some place. 11 MR. MCGLYNN: We will get to that. 12 Q. But I just need an answer to my question. 13 MR. FALBY: You keep asking the same 14 question. Do you expect to get a different answer? 15 Objection. 16 A. No. 17 MR. FALBY: Well, don't say no. You 18 said you talked about it in another place, right? 19 THE WITNESS: Yes, I could have. 20 MR. FALBY: Or may have. 21 MR. MCGLYNN: Bruce, I have to put you 22 under oath and start asking you questions. 23 Q. Now, sir, take a look, if you would, at 24 your rebuttal report.</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. So you're saying that it would just have 2 some effect, adverse effect, on the value of the 3 property? 4 MR. FALBY: I object to your 5 characterization which implies two alternatives, and 6 I don't think you can characterize the actual facts. 7 MR. MCGLYNN: Bruce, all I need you to 8 do is say your objection, and we will move on. 9 Q. Now, sir, can I have an answer to my 10 question? 11 A. My expert report, I think it states the 12 opinion that the construction of the garage had a 13 negative impact on the value of the subject 14 property. 15 Q. And -- have you finished your answer? 16 A. Yes. 17 Q. And that negative impact would have been 18 included in your valuation as of October 18, 2004, 19 correct? 20 A. The garage was existing at the time of my 21 appraisal, as of October 2004, and it was considered 22 in the appraisal. 23 Q. And how do you know it was considered in 24 the appraisal?</p>	<p style="text-align: right;">Page 93</p> <p>1 MR. FALBY: I will just note for the 2 record your questions are unfair; and unlike some 3 experts, Mr. Stotz is not a professional expert. He 4 doesn't have experience with people asking unclear 5 questions. 6 Q. Do you have your rebuttal report there, 7 sir? 8 A. Yes. 9 Q. All right. Would you turn to page 12, 13, 10 and 14, in particular 13 at the top. You say at the 11 top -- I'm not going to read the whole thing, but if 12 you want to read it into the record -- 13 MR. FALBY: Are you in the rebuttal 14 report to which you referred Mr. Stotz? 15 MR. MCGLYNN: He's got it. You don't 16 have a copy? 17 MR. FALBY: It doesn't look like you are 18 in it, but whatever. 19 MR. MCGLYNN: I'm sorry, the expert 20 report, not the rebuttal report. 21 Q. Okay, sorry, and at page 13 -- 22 A. Yes. 23 Q. -- you say, "it is apparent that the new 24 parking garage at the adjacent property did obstruct</p>

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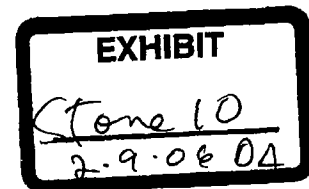
<p style="text-align: right;">Page 94</p> <p>1 a portion of the subject's view from the highway, 2 and conversely from the building to the highway," 3 correct? 4 A. Yes. 5 Q. You will agree with me that that's your 6 finding, correct? 7 A. Yes. 8 Q. And that's not contained in your October 18 9 report, correct? 10 A. Not those words, no. 11 Q. Not anything relating to the garage 12 obstructing the view of the building from the 13 highway, correct? 14 MR. FALBY: Objection, mischaracterizes 15 his testimony. 16 Q. You may answer. 17 A. That's correct, nothing about that. 18 Q. And going on, you say, "In my professional 19 opinion" -- page 13 -- "any structure that is built 20 that interferes with the view of another structure 21 from a major highway, or any structure that adds 22 significantly to the traffic congestion in an area, 23 will have a detrimental impact on the value of the 24 existing structure"; do you see that?</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. So you relied on what was contained in a 2 complaint, correct? 3 A. And my general experience in those matters. 4 Q. Well, I'm just looking at what you say. 5 You say "in my professional opinion." Is that what 6 you said? 7 A. Yes. 8 Q. All right. You don't say "in my 9 professional opinion, I can read what's contained in 10 a complaint," do you? 11 MR. FALBY: Objection. It says what it 12 says, and you just mischaracterized what he said, 13 and it's unfair to the witness. 14 MR. MCGLYNN: No, it's not unfair. 15 These are perfectly legitimate questions. 16 MR. FALBY: No, they're not legitimate 17 questions. You are arguing with the witness. 18 MR. MCGLYNN: I'm cross-examining the 19 witness. 20 MR. FALBY: You are arguing with him to 21 no effect, no point. 22 MR. MCGLYNN: Well, we will let the 23 record decide that. 24 Q. Your statement here is it's in your</p>
<p style="text-align: right;">Page 95</p> <p>1 A. Yes. 2 Q. You will agree with me that neither that 3 statement nor anything similar to that was contained 4 in your October 18 report? 5 A. That's true. 6 Q. Did you observe -- strike that. Did you do 7 any traffic studies with respect to your 8 professional opinion as expressed on page 13 of your 9 expert report? 10 A. No. 11 Q. Did you consult with a traffic consultant? 12 A. No. 13 Q. Did you stand out there during rush hour 14 and see what the alleged traffic congestion in the 15 area was? 16 A. No. My primary source for that statement, 17 which refers to before the garage was built and then 18 after the garage was built, the fact that it would 19 add traffic, came from the complaint that was filed 20 by the subject building owners during that -- during 21 the process of approving the garage with the town of 22 Canton where they did state that the increased 23 traffic would have a detrimental effect on their 24 building.</p>	<p style="text-align: right;">Page 97</p> <p>1 professional opinion, correct? 2 A. Yes. 3 Q. You also indicate -- 4 MR. FALBY: Let me just note for the 5 record that you have just established something. In 6 his professional opinion, any structure that adds 7 significantly to the traffic congestion will have an 8 impact, and he said that he relied, for a portion of 9 that, that it would have an impact, on the 10 statements of your clients. 11 MR. MCGLYNN: Bruce, you know the rules. 12 Make your objection, no coaching of the witness. 13 MR. FALBY: I'm actually not coaching 14 the witness. What I am trying to do is just make 15 sure that the record is clear. 16 MR. MCGLYNN: Well, you know what? You 17 will have plenty of time to redirect this witness 18 after I finish, but no more coaching. 19 MR. FALBY: I'm not coaching, Peter. 20 I'd appreciate it if you would stop 21 mischaracterizing what he says, which is what you 22 are doing. 23 Q. All right. Let's go on, sir. You also 24 indicate on page 14, Paragraph No. 2, that "the</p>

25 (Pages 94 to 97)

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<p style="text-align: right;">Page 102</p> <p>1 MR. MCGLYNN: I didn't say on the 2 original exhibit. 3 Q. Did you conduct any measurements to 4 determine how much of the view from 150 Royall was 5 obstructed by this garage? 6 A. No. 7 Q. Did you get up on the second floor of 150 8 Royall to see whether or not the view from the 9 top -- the second floor of 150 Royall was obstructed 10 by the garage? 11 A. During the tour we were on the second 12 floor, but I do not recall if we were in the exact 13 corner or the area where the view was obstructed. 14 Q. You knew there were trees there as well, 15 correct? 16 A. I don't know that. 17 Q. There were trees that were on -- in front 18 of -- strike that -- in between 150 Royall and Route 19 95? 20 A. What period of time are you talking? 21 Q. When you did your field work. 22 A. There are trees to the south, I believe. I 23 don't believe there are trees or substantial trees 24 between the subject property and the parking garage.</p>	<p style="text-align: right;">Page 104</p> <p>1 have an impact on employee satisfaction? 2 Q. Yes. 3 A. Compared to a view of the garage? 4 Q. No trees. 5 A. No trees? 6 MR. FALBY: Object to the ambiguity of 7 the question. 8 Q. You may answer. 9 A. I have not -- I'd need to consider that a 10 little further, I think, before I answer that 11 question. It's not something I'd want to answer off 12 the top of my head. 13 Q. So is it your testimony today, sir, that if 14 the garage was not there, that your valuation of the 15 building as of October 18, 2004, would be greater 16 than \$15 million? 17 A. I can't say that with any certainty because 18 that wasn't the case as of that date. 19 Q. Well, the garage was there at the time, 20 correct? 21 A. Yes, but you are asking me to assume 22 something that was not in place. I don't really 23 know the true extent that -- you know, what was 24 there in place of the garage prior to that, so it's</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. Take a look at page 40 of your October 2 report. 3 A. Uh-huh. 4 Q. Exhibit 16. Do you see that? 5 A. Yes. 6 Q. Do you see where it shows little black 7 arrows? 8 A. Yes. 9 Q. What's the squiggly marking on the adjacent 10 lot? What does that signify? 11 A. That signifies some kind of growth. 12 Q. Some kind of growth. All right. And that 13 growth is in between the building and Route 128, 14 correct? 15 MR. FALBY: Tiny little bushes. 16 A. To the -- I'd call that the southwest, yes. 17 Q. Would those have an impact on -- how do you 18 describe it? 19 MR. MCGLYNN: I'm going to try and find 20 his exact language in his expert report. 21 MR. FALBY: Employee satisfaction? 22 Q. -- employee satisfaction? 23 MR. MCGLYNN: Thank you, Bruce. 24 A. You are asking me if a view of trees would</p>	<p style="text-align: right;">Page 105</p> <p>1 difficult for me to say the impact on my estimate if 2 the garage wasn't there. 3 Q. So what you are saying in your expert 4 report, at least as it relates to this garage, is 5 that it had a negative impact, correct? 6 A. Yes. 7 Q. You just can't quantify it? 8 A. That's correct. 9 Q. And you can't tell us whether or not it 10 would mean that the -- that without the garage, the 11 building would have been worth more than the \$15 12 million that you valued it as of October 18, 2004? 13 A. That's correct, I couldn't opine. 14 Q. And your discussions or conversations with 15 Polcari -- excuse me, with Donovan and Needle, they 16 are not reflected in any notes or memoranda or 17 minutes that you or anybody at Bonz & Company 18 prepared, correct? 19 MR. FALBY: Objection, asked and 20 answered. 21 A. The -- I will say that my recollection of 22 the -- after I looked through the workpapers that 23 were provided by Bonz & Company in association with 24 the 2004 report, I did see a sheet recording some</p>

EXHIBIT 14



LEASE TERMINATION AGREEMENT

This **LEASE TERMINATION AGREEMENT** entered into as of this 5th day of August, 2003 between EquiServe, Inc., successor to Equiserve Limited Partnership, as "Tenant", and Blue Hills Office Park, LLC, as "Landlord", relating to the Lease dated April 19, 1989, as subsequently amended and assigned (the "Lease"), covering a portion of the premises commonly known and addressed as 150 Royall Street, Canton, Massachusetts (the "Demised Premises").

WHEREAS, the term of the Lease ends on July 31, 2004 and, for all purposes, Tenant has waived, relinquished and terminated its right to extend that term or in any manner to otherwise occupy the Demised Premises beyond July 31, 2004 (the "Termination Date"), except as herein specifically set forth; and

WHEREAS, Tenant, in making arrangements for its relocation from the Demised Premises, has worked with Landlord to reach agreements herein set forth as to the contents and condition of the Demised Premises upon it being vacated by Tenant;

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) paid by each party hereto to the other, and in consideration of the mutual agreements herein, the receipt and sufficiency of which consideration the undersigned acknowledge, Landlord and Tenant agree as follows:

1. Personalty, Fixtures & Equipment. At the Termination Date or the conclusion of the Holdover Period (defined in Section 4, below), as the case may be, or such earlier date upon which the Lease is properly terminated on account of Tenant's default, Tenant agrees to leave the following personalty or equipment at the Demised Premises:

- (i) Voice and data cabling and electric wiring and equipment other than non-telephone computers and computer equipment, handsets and telephone switching equipment;
- (ii) Security system including its wiring, cameras and monitors;
- (iii) All health club and cafeteria furniture, fixtures, equipment and inventory owned by Tenant or any affiliates of Tenant;
- (iv) Generator and its appurtenances;
- (v) Electric scissor lift utilized by Tenant at the Demised Premises;
- (vi) A minimum of sixty percent (60%) of the workstation partitions, tracks and wiring and related office furniture (collectively, "Workstations") presently located in the Demised Premises, provided that the Workstations removed from the Demised Premises shall be generally of the same quality, type and mix as those that remain in the Demised Premises, that those removed are removed to 250 Royall Street in Canton, Massachusetts; being the property to which Tenant intends to move, or are used as "trade-ins" for procuring furnishings for the same, and that the Workstations which remain in the Demised Premises shall remain in one or more contiguous areas; and

- (vii) All HVAC, plumbing and electrical systems (including fixtures and equipment making up the same) presently located in the Demised Premises and placed therein by Tenant and not otherwise specifically dealt with in (i) through (vi) above.

The personalty or equipment to be left in the Demised Premises by Tenant by the terms of this Paragraph 1 described in the foregoing subsections (i) through (vi), inclusive, is referred to collectively as the "Yield Up Property." Tenant may, but is not obligated, to remove all its other personalty, fixtures and equipment (collectively, "Tenant Property") from the Demised Premises, and shall not remove or restore its alterations and modifications located therein. Title to the Yield Up Property and any other Tenant Property that remains at the Demised Premises on the Termination Date or at the conclusion of the Holdover Period, as the case may be, shall vest in Landlord on such date. Upon request of Landlord at or after such date, Tenant shall execute and deliver to Landlord a bill of sale in the form attached hereto as Exhibit A confirming transfer of title to the Yield Up Property. Any Tenant Property not removed at the Termination Date as that date is applicable to the Demised Premises not subject to holdover hereunder, and as applicable to the Holdover Premises, as applicable, shall be considered abandoned by Tenant and may be used or disposed of by Landlord as it determines, without Landlord or Tenant having any obligation to the other or any third party relating thereto, including, without limitation, any obligation of Landlord for an accounting thereof to Tenant or any third party.

2. Condition of Yield Up Property and Other Equipment & Fixtures. All Yield Up Property shall be maintained by Tenant through the Termination Date applicable to the Demised Premises in which they are located, in good operating condition. In addition, Tenant shall continue to maintain in good operating condition through the Termination Date the currently existing building systems (such as the plumbing, electrical and HVAC systems) and the components, fixtures and equipment comprising the same and shall leave the same in the Demised Premises as and when required to be vacated hereunder.

3. Removal Damage. Tenant shall use reasonable care in its move out and removal of Tenant Property. Damage caused by Tenant's move-out or removal of Tenant Property other than incidental blemishes in paint and finishes shall be repaired by Tenant to reasonably good condition. If Tenant breaches its obligations under this Section 3 and Landlord reasonably expends in excess of Ten Thousand Dollars (\$10,000) to bring the Demised Premises into a condition consistent with this Section 3, Tenant shall be obligated to reimburse Landlord for such reasonable expenses in excess of Ten Thousand Dollars (\$10,000) within seven (7) days of receipt of an invoice therefor.

4. Holdover. Tenant shall have the right to hold over in a portion of the Demised Premises (but not in the area shown as Bay 000 on the floor plan attached hereto as Exhibit B and incorporated herein by reference), provided that:

- A. Tenant gives Landlord written notice on or before January 15, 2004, of its intention to hold over, which notice shall identify the contiguous area on the first and/or second floor of the Demised Premises in which Tenant intends to hold over (the "Holdover Premises"), such notice also must

state the duration of the hold over through the end of a calendar month, but not beyond October 31, 2004 (the hold over termination date as so specified by Tenant, the "Holdover Termination Date"). The holdover notice must also identify the Yield Up Property which will be yielded up to Landlord on the Termination Date and generally describe the personal property Tenant intends to remove or leave at the Demised Premises on the original Termination Date and on the Holdover Termination Date. Tenant's right to holdover is further subject to the following conditions: (i) Tenant shall have then maintained its obligations under the Lease current, without default not cured within any applicable grace period; (ii) Tenant otherwise vacates the remaining Demised Premises (i.e., the non Holdover Premises) in the Building on or before July 31, 2004, and (iii) Tenant pays rent and additional rent for its holdover of the Holdover Premises, calculated at that rate per square foot equal to 110% times per the square foot rent under the Lease, which payment is to be made on or before July 1, 2004, together with other sums which accrue for Tenant's occupancy for the month of July, 2004;

- B. Landlord will have the right, in addition to any other remedies at law or under the Lease, to have Tenant vacate and to recover the Demised Premises as of the Termination Date and the Holdover Premises (if any) as of the Extended Termination Date (by summary process or specific performance, as Landlord determines), free and clear of any right or interest of Tenant therein. Landlord's cost in proceedings to recover possession, including but not limited to reasonable legal fees and related costs, shall be payable by Tenant within 7 days after being invoiced therefor. If Tenant holds over in any portion of the Demised Premises for which Tenant has no right to holdover in accordance with this Paragraph 4, Tenant shall be responsible for holdover rent for a full calendar month on account of Tenant occupying for all or any portion of a month, at a rate equal to the rent, additional rent and other sums which accrue with respect to its occupancy of the Demised Premises for the month of July, 2004, times 150%; and
- C. In the event of a holdover by Tenant pursuant to Paragraph 4.A above, the term "Termination Date" shall apply (i) to the Extended Termination Date for the Holdover Premises, but not later than October 31, 2004 as to the Holdover Premises, and (ii) to July 31, 2004 for the remaining portion of the Demised Premises.

5. Representations & Warranties. Landlord and Tenant represent and warrant to the other as follows:

- A. It has all requisite corporate power and authority to execute, deliver and perform this Agreement without further authorization or condition precedent; and
- B. Its execution, delivery and performance of this Agreement constitutes a legal, valid and binding obligation enforceable in accordance with its terms effective and enforceable as of this date.

6. Miscellaneous.

- A. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- B. This Agreement shall be governed by and enforced and construed in accordance with the laws of the Commonwealth of Massachusetts. Any action at law or in equity arising out of or relating to this Agreement shall be filed only in the Superior Court of either Norfolk County or Suffolk County, Massachusetts, and the parties hereby consent and submit to the personal jurisdiction of such courts for the purpose of litigating any such action.
- C. The parties hereto waive all right to trial by jury, and expressly agree to bear their own costs of such litigation including, but not limited to, attorneys' fees; provided, however, to the extent a party is held to have breached its agreements herein, that liable party shall also be responsible to pay and reimburse the other party for its reasonable legal fees and costs incurred in that proceeding.
- D. This Agreement may not be altered, amended, or otherwise modified except by writing duly executed by an authorized representative of the party against which enforcement is sought.
- E. This Agreement constitutes the entire understanding of the parties hereto with respect to the condition of the Demised Premises and the Termination Date of the Lease.
- F. The recitals herein are incorporated within and made part of this Agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the undersigned have signed this Lease Termination Agreement under seal as of the day and year first above-written.

EquiServe, Inc., successor to
Equiserve Limited Partnership

TENANT:

By:

Morton B. Comer
Name: MORTON B. COMER
Title: CHIEF OPERATING OFFICER

Blue Hills Office Park LLC

LANDLORD:

By:

Name:
Title:

00774994.7

IN WITNESS WHEREOF, the undersigned have signed this Lease Termination Agreement under seal as of the day and year first above-written.

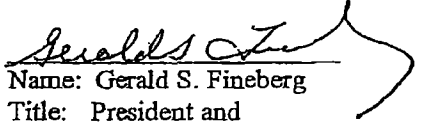
EquiServe, Inc., successor to
Equiserve Limited Partnership

TENANT:

By: _____
Name: _____
Title: _____

Blue Hills Office Park LLC
By: Blue Hills Management Corp.,
its Manager

LANDLORD:

By: 
Name: Gerald S. Fineberg
Title: President and
Treasurer

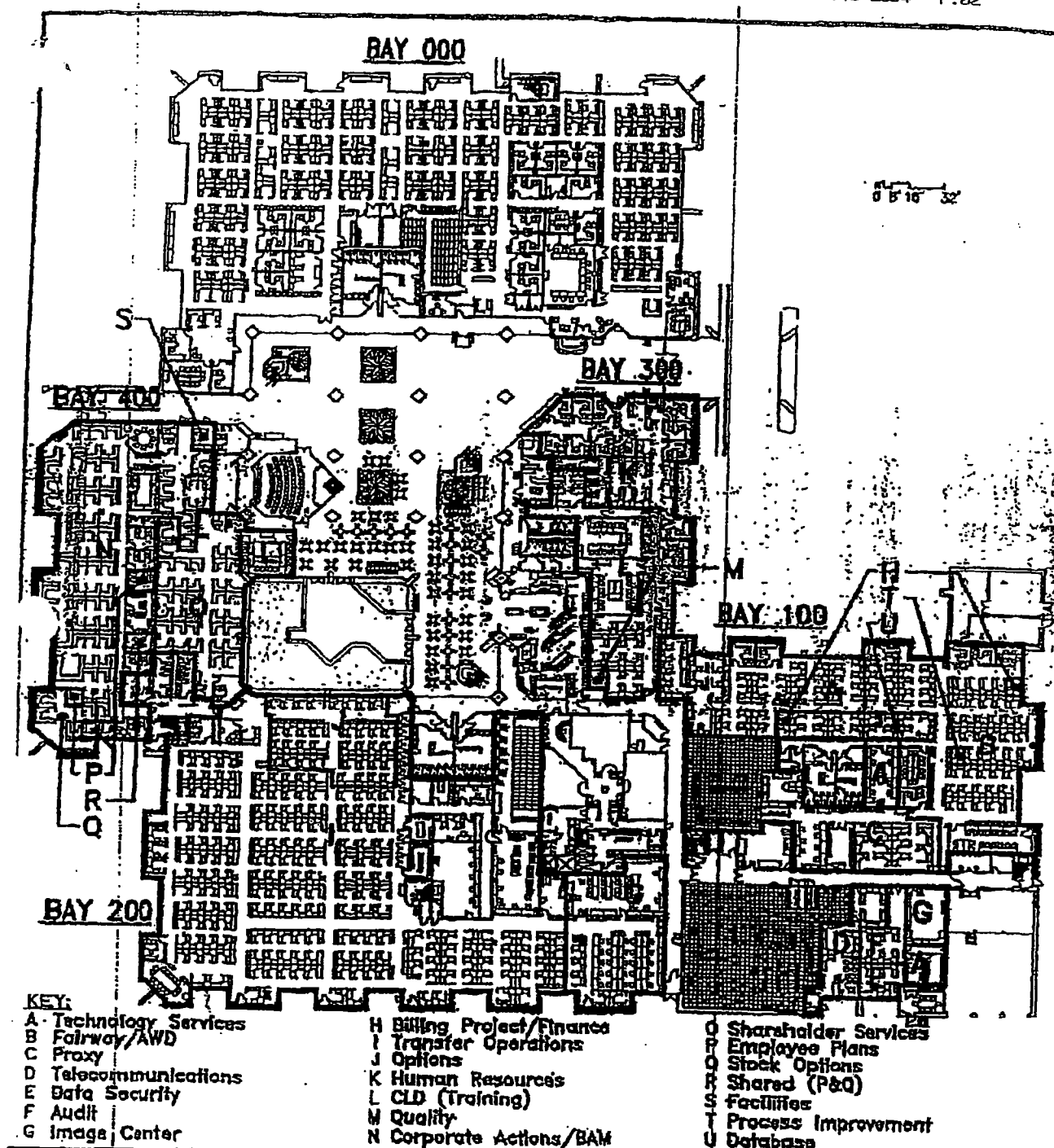
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#274037 v1/14500/9547

EXHIBIT B
FLOOR PLAN

BLUE HILL 1609

1/20/01 ON TR/XL 10:14:07 80/12/10
JUL-21-2003 11:53 EQUISERV

781 575 2654 P.02



JTH & SEELEN INC.
ARCHITECTURE INTERIOR DESIGN PLANNING

Subject: NOVEMBER 2000 SPACE ALLOCATION 1" = 60'-0"

Project: 1ST FLOOR - EQUISERVE

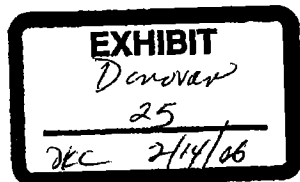
150 ROYALL STREET, CANTON, MA.

Drawing Number:

SC-1

BLUE HILL 1610

EXHIBIT 15



on or
about Aug 04
voice mail

My name is Tobe Warsaw with
Cenar Partners in Miami my number
is 305-695-5092

we are the special servicer on the
Blue Hills office Park loan the
file has been transferred to special
~~servicing~~ servicing please call me

Tobe Warsaw 305-695-5092

I will be faxing over to you all a
letter to you that we would
like signed prior to engaging in
discussion The letter is made
out addressed to Gerald Fineberg

but we will fax it over to you all
shortly

I am calling to introduce myself
I'll be faxing shortly.

Blue Hill 1230

on on about
8/04

voice mail

got a call from

Eric Hottel Bouch & Co Boston

We are doing an appraisal in
regards to 150 Loyall St in Canton

This is an introductory call that
we do on a new job to

understand whats going on at
a building. I drove by there

other day - saw that it was
empty please call

617-478-2090 Ext 108

EXHIBIT 16

EXHIBIT 51

Polcari

2/28/06 +46

CREDIT SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP.,
Depositor

WELLS FARGO BANK, NATIONAL ASSOCIATION,
Servicer

LENNAR PARTNERS, INC.,
Special Servicer

THE CHASE MANHATTAN BANK,
Trustee

NORWEST BANK MINNESOTA, NATIONAL ASSOCIATION,
Certificate Administrator and Custodian

POOLING AND SERVICING AGREEMENT

Dated as of October 11, 1999

\$1,187,129,449
Commercial Mortgage Pass-Through Certificates
Series 1999-C1

the related Mortgaged Property within the 12-month period immediately prior to the occurrence of such Appraisal Reduction Event. Instead, the Special Servicer may use such prior Appraisal in calculating any Appraisal Reduction with respect to such Loan.

With respect to each Loan as to which an Appraisal Reduction Event has occurred and which has become a Corrected Loan and has remained current for twelve consecutive Monthly Payments, taking into account any amendment or modification of such Loan, and with respect to which no other Appraisal Reduction Event has occurred and is continuing, the Special Servicer may within 30 days after the date of such twelfth Monthly Payment, order an Appraisal (which may be an update of a prior Appraisal), or with respect to any Loan with an outstanding principal balance less than \$2,000,000, perform an internal valuation or obtain an Appraisal (which may be an update of a prior Appraisal), the cost of which shall be paid by the Servicer as a Servicing Advance. Based upon such Appraisal or internal valuation, the Special Servicer shall redetermine and report to the Trustee and the Servicer the amount of the Appraisal Reduction with respect to such Loan and such redetermined Appraisal Reduction shall replace the prior Appraisal Reduction with respect to such Loan.

Section 3.20 Modifications, Waivers, Amendments and Consents.

(a) Subject to the provisions of this Section 3.20, the Servicer and the Special Servicer may, on behalf of the Trustee, agree to any modification, waiver or amendment of any term of any Loan without the consent of the Trustee or any Certificateholder.

(i) For any Loan other than a Specially Serviced Loan and the L'Enfant Participation and subject to the rights of the Special Servicer set forth below, the Servicer shall be responsible subject to the other requirements of this Agreement with respect thereto, for any request by a Borrower for the consent of the mortgagee or a modification, waiver or amendment of any term thereof, provided that such consent or modification, waiver or amendment would not affect the amount or timing of any of the payment terms of such Loan, result in the release of the related Borrower from any material term thereunder, waive any rights thereunder with respect to any guarantor thereof or relate to the release or substitution of any material collateral for such Loan. To the extent consistent with the foregoing, the Servicer shall be responsible for the following:

(A) Approving any waiver affecting the timing of receipt of financial statements from any Borrower provided that such financial statements are delivered no less than quarterly and within 60 days of the end of the calendar quarter to which such financial statements relate;

(B) Approving routine leasing activity with respect to leases for less than the lesser of (a) 30,000 square feet and (b) 20% of the related Mortgaged Property;

(C) Approving annual budgets for the related Mortgaged Property, provided that no such budget (1) relates to a fiscal year in which an Anticipated Repayment Date occurs, (2) provides for the payment of operating expenses in an amount equal to more than 110% of the amounts budgeted therefor for the prior

year or (3) provides for the payment of any material expenses to any affiliate of the Borrower (other than the payment of a management fee to any property manager if such management fee is no more than the management fee in effect on the Cut-off Date);

(D) Waiving any provision of a Loan requiring the receipt of a rating confirmation if such Loan is not a Significant Loan and the related provision of such Loan does not relate to a "due-on-sale" or "due-on-encumbrance" clause (which shall be subject to the terms of Section 3.08 hereof); and

(E) Subject to other restrictions herein regarding Principal Prepayments, waiving any provision of a Loan requiring a specified number of days notice prior to a Principal Prepayment.

(ii) Notwithstanding the foregoing, the Servicer shall not waive, modify or amend the provisions of any Loan unless such waiver, modification or amendment would not constitute a "significant modification" under Treasury Regulations Section 1.860G-2(b).

(iii) The Special Servicer shall be responsible for any request by a Borrower for the consent of the mortgagee and any modification, waiver or amendment of any term of any Loan for which the Servicer is not responsible, as provided above, or if such consent, request, modification, waiver or amendment relates to a Loan that is on the most recent Servicer Watch List, has a Debt Service Coverage Ratio (based on the most recently received financial statements and calculated on a trailing twelve month basis) less than the greater of 1.1x or 20% less than the Debt Service Coverage Ratio as of the Cut-off Date (unless such Loan is a credit lease loan) or with respect to which an event of default has occurred in the preceding 12 months.

(b) All modifications, waivers or amendments of any Loan shall be (i) in writing and (ii) effected in accordance with the Servicing Standard.

(c) Neither the Servicer nor the Special Servicer, on behalf of the Trustee, shall agree or consent to any modification, waiver or amendment of any term of any Loan that is not a Specially Serviced Loan if such modification, waiver or amendment would:

(i) affect the amount or timing of any related payment of principal, interest or other amount (including Prepayment Premiums or Yield Maintenance Charges, but excluding Penalty Interest and other amounts payable as additional servicing compensation) payable thereunder;

(ii) affect the obligation of the related Mortgagor to pay a Prepayment Premium or Yield Maintenance Charge or permit a Principal Prepayment during any period in which the related Note prohibits Principal Prepayments;

(iii) except as expressly contemplated by the related Mortgage or pursuant to Section 3.09(e), result in a release of the lien of the Mortgage on any material portion of the related Mortgaged Property without a corresponding Principal Prepayment in an

EXHIBIT 17

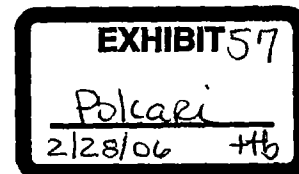
Cowling, Larry C.

From: O'Neal, Kathryn A
Sent: Tuesday, August 17, 2004 9 51 AM
To: Bass, Ilona M ; Beliz, Carmen H , Boi, Susie; Britton, Stephanie S.; Budgin, Bryan; Chung, Patrick; CMS CASH MANAGEMENT; CMS TAX; Cocco, Rusty E.; Connolly, Lisa; Delagarza, Jeannette V ; Fray, Joyce, Greene, Debra M.; Gremore, Maggie M.; Hancock, AnnMarie; Hayek, Doug R ; Huebner, David D., INVESTOR REPORTING, Kohal, Linda K.; Krueger, June, Kwong, Henry B ; Lai, Teresa; Lambson, Deborah E., Lapointe, Raymond L ; Lei-Morales, Stephanie S , Martin, Jill L ; McAdams, Stewart E.; Mooney, Pat J., Nhan, Vi, Nyholm, Christine T., Nziramasanga, Charles, O'Neill, Michael F ; Ross, Misty M ; Rudio, Fay H.; Shuheiber, Rania, Stephens, Kate, Swanson, Steven; Tso, Christine C ; Tumbow, Daniel T., Villanueva, Edward, West, Stephanie M , Wong, Nancy M ; zz.RMD LOAN SERV; Borstead, Juanita L.; Brewster, Jeanne M.; Bruning, Marlies; Burns, Sarah, Cowling, Larry C ; Gamage, Gary A., Landry, Susan M., Lewis, Troy D.; Mallegni, Curtis J., Mowbray, Scott; Murray, Ken V.; Poblete, M. Tessie; Rudder, Debra A ; Sutterfield, Noreen; Vaughn, Barbara; Yoo, Jimmy
Subject: FW: Special Service Transfer Blue Hills Office Park LLC Loan #760990083 Pool CSFB 1999-C1 INV 524 - Lennar Partners, Inc Special Servicer - Loan Balance \$31,979,793 66

Approved to transfer to Lennar as Special Servicer under the imminent default provisions of the PSA.

Kathryn O'Neal
 Senior Vice President/Managing Director
 Commercial Mortgage Servicing
 Wells Fargo Bank
 45 Fremont Street, 2nd Floor
 San Francisco, California 94105

email kathryno@wellsfargo.com
 office 415-396-0782
 fax 415-975-7235



-----Original Message-----

From: Mallegni, Curtis J.
Sent: Monday, August 16, 2004 12:29 PM
To: O'Neal, Kathryn A.
Subject: Special Service Transfer Blue Hills Office Park LLC Loan #760990083 Pool CSFB 1999-C1 INV 524 - Lennar Partners, Inc. Special Servicer - Loan Balance \$31,979,793.66

It is recommended that the above referenced loan be transferred to the Special Servicer, Lennar Partners, Inc., on the basis of an imminent default as the transferring event under Section 1.01 of the Pooling and Servicing Agreement. The specifics are as follows:

Loan No.: 760990083
 Loan Pool CS First Boston Securities Corp. 1999 - C1 (Pool 524) - Lennar Partners, Inc. Special Servicer
 Borrower: Blue Hills Office Park, LLC
 Master Servicer: Wells Fargo Bank
 Special Servicer: Lennar Partners, Inc
 Asset Administration: Larry Cowling
 Property Type: One (1) two-story class A office building, of 273,863 sf known as Blue Hills Office Park located at 150 Royal Street, Canton, Mass 02021
 Loan Amount: \$31,979,793 66
 Paid to Date: July 11, 2004
 Next payment due - August 11, 2004
 Payment now past due: \$333,638 55 plus late charges of \$7,639 57
 Occupancy: Vacant - The single tenant Fleet Bank moved out at the end of July 2004
 Details of transfer request

Loan is being transferred on the basis of imminent default under the Servicing transfer provisions of the Pooling and Servicing Agreement.

The Pooling and Servicing Agreement at page 52 provides the definition of a Service Transfer Event as, among

other things, (iii) the Servicer determines that a payment default has occurred or is imminent and is not likely to be cured by the related Mortgagor within 60 days;

Status:

- This is a single tenant project of 273,863 sf, and the tenant - Fleet Bank vacated the property as of July 31, 2004
- The loan is the 12th largest loan in this pool
- The borrower has not made the August 2004 payment which is now past due
- There is a \$4,121,728 reserve for releasing which the borrower has indicated they would like to use for debt service.
- The borrower has also requested in writing and in phone conversation a meeting with the Special Servicer - Lennar to discuss the loan status and the future performance of the loan.
- Given the size of the loan and the unoccupied status of the property, it is expected that in addition to the existing past due amounts, that further non-payments can be reasonably expected in the next 60 days which require the intercession of the Special Servicer Lennar Partners, Inc.

Based on these factors, it is recommended that this loan be transferred to the Special Servicer, Lennar Partners, Inc, on the basis of an imminent default under Section (iii) of the Service Transfer Events under the Pooling and Servicing Agreement.

Curtis J. Mallegni
45 Fremont Street
2nd Floor
San Francisco, CA 94105
MAC A0194-025
Phone (415) 396-6999
Fax (415) 975-7236

EXHIBIT 18

AUG. 26, 2004 2:03PM FINEBERG MANAGEMENT

NO. 239 P. 3/5



EXHIBIT 62

Polcari
2/28/06 HFB

August 19, 2004

Blue Hills Office Park LLC
C/O Fineberg Management, Inc.
One Washington Street, Suite 400
Wellesley, MA 02481
Attention: Gerald S. Fineberg

RE: Loan in the original principal amount of \$33,149,000.00 (the "Loan") to Blue Hills Office Park LLC (the "Borrower") held by JP Morgan Chase Bank, as trustee (the "Trustee")

Portfolio: CS First Boston Mortgage, Series 1999-C1
Loan No.: 76-0990083

Dear Borrower:

Lennar Partners, Inc. (the "Special Servicer") is the Special Servicer with respect to the Loan and has the authority, on behalf of the Trustee, to discuss and to meet with representatives of the Borrower to review the status of the Loan and any issues arising under any of the documents relating to the Loan (the "Loan Documents").

We have agreed to discuss with your representatives the status of the Loan and the Loan Documents provided that the following agreements and understandings govern. In order to ensure that our discussions will be as open and productive as possible, we wanted to write to you to confirm our mutual understanding that all discussions and/or negotiations will be governed by the terms and conditions in this letter. If you are in agreement with such terms and conditions, we would appreciate you acknowledging such by signing this letter in the space provided and returning it to us.

1. **Negotiations.** The Borrower and the Special Servicer agree that any discussions, negotiations, correspondence or other communications relating to the Loan and the Loan Documents that the Borrower may have in the future or may have had with representatives of Wells Fargo Commercial Mortgage Servicing, the Master Servicer (the "Master Servicer"), or the Special Servicer, (any such discussions, negotiations or correspondence or other communications being hereinafter referred to as "Loan Communications") are not binding upon any of the Borrower, the Trustee, or Special Servicer (collectively the "Parties"). The Borrower also acknowledges and agrees that none of the Trustee, the Master Servicer or the Special Servicer is under any obligation to consent or otherwise agree to any Borrower request with respect to the Loan, or to modify the Loan or the Loan Documents. Each of the Parties understands and agrees that no Party shall have any defense to any action by one or more of the other Parties, nor assert any waiver by one or more of the other Parties, based on any Loan Communications.
2. **Releases.** The Parties hereby completely, irrevocably and unconditionally release and forever discharge each of the Parties from any and all claims and demands whatsoever, in law or equity, whether such claims are presently known or unknown, direct or indirect, fixed or contingent, which the Parties may have or may claim to have against the other caused by, or arising out of any Loan Communications.

AUG. 26. 2004 2:04PM FINEBERG MANAGEMENT

NO. 239 P. 4/5

3. **No Waivers.** Each of the Parties acknowledge and agree that participation in the Loan Communications does not constitute by any Party (a) a renewal, extension or standstill arrangement as to the exercise of any rights, remedies or powers, of such Party under the Loan Documents, (b) a waiver or the release of any defaults under the Loan or the Loan Documents, or (c) a waiver, consent, release or modification of any right or remedy under any provision of the Loan Documents. None of the Parties intends to waive any defaults that may exist, or any right or remedies unless and until it expressly does so in writing. Furthermore, participation in the Loan Communications shall not prevent any Party from exercising any right, remedy or power available to such Party including, without limitation, all rights, remedies and powers granted under the Loan Documents or at law or in equity. The Parties further understand and agree that no failure or delay in exercising any right or remedy with respect to the Loan or under the Loan Documents shall constitute a waiver of, or affect adversely in any manner, any of such rights and remedies nor shall any such failure or delay form the basis for any claim or cause of action.
4. **Only Written Agreements.** The Parties acknowledge and agree that no compromise, consent, release, waiver, or modification agreement or understanding with respect to the Loan or the Loan Documents shall constitute a legally binding agreement or contract or have any force or effect whatsoever unless and until reduced to writing and signed by the authorized representatives of all necessary Parties to any such agreement. The Parties acknowledge and agree that by executing this letter agreement, they are precluded from claiming that any agreement, consent, waiver, release, or modification, oral, express, implied, or otherwise, of the Loan or the Loan Documents, has been effected except in accordance with the terms of this letter. The Parties further acknowledge and agree that no Party is obligated to reach any agreement or to negotiate for the purpose of reaching any agreement with respect to any Borrower request for consent, waiver, release, or modification of the Loan or Loan Documents.
5. **Authority.** The Borrower represents and warrants that the Borrower is the borrower under the Loan Documents, and the person signing this Agreement on behalf of Borrower hereby represents and warrants that such person has the necessary power and authority to execute and deliver this Agreement on behalf of the Borrower. The Special Servicer represents and warrants that it is empowered to act on behalf of the Trustee under the Loan Documents in the capacity of attorney-in-fact, and the person signing this Agreement on behalf of Special Servicer hereby represents and warrants that such person has the necessary power and authority to execute and deliver this Agreement on behalf of the Trustee. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors, legal representative and assigns as applicable.
6. **Expenses.** The Borrower agrees that it shall pay all costs of the Special Servicer in connection with Loan Communications, including but not limited to expenses for inspection of the property, legal fees and the fees of other professionals.
7. **Advice from Independent Counsel.** The Borrower acknowledges that independent counsel represents the Borrower, or if not so represented, that Borrower has been advised to obtain representation by independent counsel, and has fully reviewed the terms of this Agreement. Borrower acknowledges that Borrower executes this Agreement, based on its own independent judgment, on the advice of counsel, if represented, and is under no threat, coercion or duress from any Party.
8. **Settlement Negotiations.** Borrower acknowledges and agrees that any conduct or statements, whether written, oral, telephonic or otherwise, made at any time in connection with the Loan Communications are without prejudice and, without exception, constitute settlement negotiations that are not to be disclosed to any other person nor to be admissible as evidence in any administrative or judicial proceeding (i) between the Trustee, Borrower

LNR03519

AUG. 26. 2004 2:04PM FINEBERG MANAGEMENT

NO. 239 P. 5/5

and/or Special Servicer, or (ii) involving any of the Loan Documents or any of the property securing the Loan. The Loan Communications, or any writings generated as a result of the Loan Communications, may not be used in any litigation to indicate culpability, weakness of position or an admission of liability, or to otherwise admit any obligations due and owing to or from the Parties.

9. Information Request. In order to enable the Special Servicer to properly evaluate the Borrower's request, the Borrower agrees to forward to the Special Servicer all the information checked on Exhibit A, which is attached hereto.

Additional information may be requested in the future. Thank you for your attention to this matter.

Lennar Partners, Inc., as Special Servicer

By: 

Job Warshaw
Sr. Vice President
Real Estate Finance & Servicing Group
Lennar Partners, Inc.

ACKNOWLEDGED AND AGREED BY:

Borrower: Blue Hills Office Park LLC

By its manager: Blue Hills Management Corp.

By: 

Name: Gerald S. Fineberg
Title: President

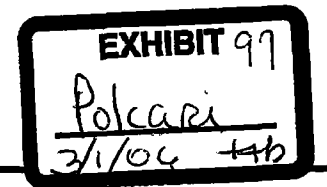
NOTICE TO CONSUMER BORROWERS AS REQUIRED BY FEDERAL FAIR DEBT COLLECTION PRACTICES ACT: We are attempting to collect debt and any information obtained will be used for that purpose.

ATTENTION TO ANY DEBTOR IN BANKRUPTCY OR WHO HAS RECEIVED A DISCHARGE IN BANKRUPTCY OR WHO MAY HAVE PAID, SETTLED OR IS OTHERWISE NOT OBLIGATED: Please be advised that this letter constitutes neither a demand of payment of the captioned debt nor a notice of personal liability to any recipient hereof who might have received a discharge of such debt in accordance with applicable bankruptcy laws or who might be subject to the automatic stay of Section 362 of the United States Bankruptcy Code, has paid, settled or is otherwise obligated by law.

cc: Debra Rudder - Wells Fargo Commercial Mortgage Servicing
Pat Prince - Lennar Partners/Loan Servicing

LNR03520

EXHIBIT 19



From: Isaac Pesin
Sent: Wednesday, October 13, 2004 5:58 PM
To: Joe Polcari
Subject: RE: Blue Hills

Binders are already being produced. LG can discuss @ mtg. That's one hell of a loss- congrats

-----Original Message-----

From: Joe Polcari
Sent: Wednesday, October 13, 2004 6:54 PM
To: Isaac Pesin
Subject: Blue Hills

Isaac, Larry and I have been doing a little last minute tweaking, and we have changed Blue Hills' loss to \$18,590,000.

From: Joe Polcari
Sent: Wednesday, October 13, 2004 5:59 PM
To: Isaac Pesin
Subject: RE: Blue Hills

F-ing Skoko. Always one step ahead.

-----Original Message-----

From: Isaac Pesin
Sent: Wednesday, October 13, 2004 6:58 PM
To: Joe Polcari
Subject: RE: Blue Hills

Skoko's healthcare turd wins...sorry

-----Original Message-----

From: Joe Polcari
Sent: Wednesday, October 13, 2004 6:57 PM
To: Isaac Pesin
Subject: RE: Blue Hills

Am I in first place?

-----Original Message-----

From: Isaac Pesin
Sent: Wednesday, October 13, 2004 6:56 PM
To: Joe Polcari
Subject: RE: Blue Hills

Binders are already being produced. LG can discuss @ mtg. That's one hell of a loss- congrats

-----Original Message-----

From: Joe Polcari
Sent: Wednesday, October 13, 2004 6:54 PM
To: Isaac Pesin
Subject: Blue Hills

Isaac, Larry and I have been doing a little last minute tweaking, and we have changed Blue Hills' loss to \$18,590,000.

From: David Hall
Sent: Thursday, October 14, 2004 8:18 AM
To: Joe Polcari
Subject: RE: Blue Hills

40-ish

David S. Hall
Lennar Partners
300 Crown Colony Drive
Quincy, MA 02169

(617) 472-4540
(617) 472-4580 fax
(617) 930-3973 mobile

dhall@lnrproperty.com

-----Original Message-----

From: Joe Polcari
Sent: Wednesday, October 13, 2004 7:01 PM
To: David Hall
Subject: Blue Hills

David, I got your e-mail to Ron, which pretty much covers everything. One more thing - what would you pay for it as is? (assuming you were interested, which I know you're not)

From: Joe Polcari
Sent: Thursday, October 14, 2004 8:47 AM
To: David Hall
Subject: RE: Blue Hills

just like you.

-----Original Message-----

From: David Hall
Sent: Thursday, October 14, 2004 9:18 AM
To: Joe Polcari
Subject: RE: Blue Hills

40-ish

David S. Hall
Lennar Partners
300 Crown Colony Drive
Quincy, MA 02169

(617) 472-4540
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(617) 930-3973 mobile

dhall@lnrproperty.com

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Sent: Wednesday, October 13, 2004 7:01 PM
To: David Hall
Subject: Blue Hills

David, I got your e-mail to Ron, which pretty much covers everything. One more thing - what would you pay for it as is? (assuming you were interested, which I know you're not)



Via Federal Express

October 20, 2004

JP Morgan Chase Bank f/k/a
Chase Manhattan Bank
Institutional Trust Services
4 New York Plaza, 6th Floor
New York, New York 10004
Attn: Ms. Pei Yan Huang

Wells Fargo Commercial Mortgage Servicing
45 Fremont Street, 2nd Floor
San Francisco, CA 94105
Attn: Ms. Debra Rudder

Re: Portfolio: Credit Suisse First Boston Mortgage Securities Corp., Series 1999-C1
Loan No.: M760990083
Borrower Name: Blue Hills Office Park
Property Address: Blue Hills Office Park
150 Royal Street
Canton, MA 02021

Dear Ms. Huang and Ms. Rudder:

We have received the above captioned loan for special servicing. In accordance with Section 3.18(b) of the Pooling and Servicing Agreement dated as of 10-11-99, we are required to give notice that it has been "determined in good faith that such Defaulted Mortgage Loan will become subject to foreclosure proceedings".

Very truly yours,

Vickie M. Taylor
Special Servicing Supervisor

cc: Patricia Prince - Lennar Partners/Director of Servicing
Javier Benedict - Lennar Partners/Compliance
Joe Polcari - Lennar Partners/Asset Manager

SCANNED

309 12-3-2004

From: Randall Rosen
Sent: Monday, October 25, 2004 9:11 AM
To: Joe Polcari; Larry Golinsky
Subject: RE: Blue Hills

I have talked to CBRE, Trammel Crow and the current group, C&W. C&W is having trouble because Fineberg's people blew their tops when they found out they were talking to us. The leasing guy also told me there is some good, recent tenant interest but he didn't elaborate. I'm thinking about going with C&W however we have had mgmt agreement issues with them in the past which need to be overcome first.

-----Original Message-----

From: Joe Polcari
Sent: Friday, October 22, 2004 12:23 PM
To: Larry Golinsky
Cc: Randall Rosen
Subject: Blue Hills

David has been hearing a lot of noise about tenant interest. One prospect is Equiserve, our former tenant and now neighbor. The info is coming from RBJ, a local broker who David knows, and who I've dealt with in the past.

Randy, if we go forward with our sale on Nov 12, who will we use as PM and listing agent?

From: Joe Polcari
Sent: Tuesday, October 26, 2004 5:12 PM
To: Larry Golinsky
Subject: Blue Hills

Larry, today David and I met with John O'Neil of National Development and Michael Frisoli of Richards Barry Joyce (brokers). National Development built the building next to Blue Hills. It sat vacant for two years before they sold it to Equiserve, who then constructed the garage. RBJ is the broker that I mentioned to you earlier. Judging from our conversations, there is tenant interest. Obviously, RBJ was not going to give us alot of detail. O'Neil offered us 50 cents on the dollar for the loan. David and I agree that we should take this REO instead of including it in a note sale. We can talk more about it at your leisure.

EXHIBIT 20



Minutes of the Meeting of May 22, 2003.

PRESENT: Paul B. Carroll, Chairman
James F. Fitzgerald, Jr.
Gregory L. Pando
Robert J. Quigley, Alternate Member

ALSO

PRESENT: Sue Franco, Recording Secretary

Mr. Carroll opened the Meeting at 7:00 p.m. in the Salah Hearing Room, Memorial Hall.

Flatley Company – 25 Westchester Dr.

Attorney Suzanne Matthews and Mr. John Flatley came before the Board representing petitioner.

Attorney Matthews stated the Board previously granted a Variance for this property. One of the conditions of the decision was for petitioner to obtain the approval of his next door neighbor at 45 Westchester for the landscape plan and he now has that. She stated she would like to present the landscape plan to the Board for their approval. The two neighbors who had an issue with the variance were Mr. Slutsky at 45 Westchester Dr. and Mr. Kilduff at 50 Westchester Dr. She stated Mr. Slutsky has signed the landscape plan and is in agreement with it.

Mr. Kilduff requested to speak. He stated that it was his understanding that the petitioner was supposed to try to appease the neighbors who had an issue and he stated no one has ever tried to appease him. He stated he received a plan from Atty. Matthews and was not aware of the polishing pool that is on the property.

Attorney Matthews stated that pool has been there since the beginning and it was required by the Conservation Commission in their Order of Conditions.

Mr. Flatley stated it is for treating water from the street drain into the wetlands.

Mr. Kilduff stated he should have been notified about the Conservation hearing.

Mrs. Kilduff stated there was no mention of a polishing pool to them and they were not given the opportunity to object to it.

Zoning Board of Appeals
Meeting of May 22, 2003
Page 2 of 10

Attorney Matthews stated she got a certified list of abutters from the Conservation Commission and the Kilduff's are not on it, perhaps because they are across the street from the petitioned site.

Mr. Kilduff stated if there is a way that he can stop this, he will do it. He said he has a bad feeling about the polishing pool because he has sink holes in his driveway now and he does not want more water.

Mr. Carroll stated the Zoning Board has no authority regarding the polishing pool and that Mr. Kilduff will have to deal directly with the Conservation Commission.

Mr. Kilduff stated Mr. Flatley has done nothing to appease him.

Mr. Flatley stated he had a meeting with Mr. Kilduff two weeks ago and Mr. Kilduff asked for a deck to be constructed on the back of his home.

Mr. Fitzgerald stated that when the Board asked petitioner to try and appease the abutters, they meant in terms of landscaping, not remodeling. He asked Mr. Kilduff if he had any issue with the landscaping.

Mr. Kilduff stated he does not, he has an issue with the polishing pool.

Mr. Carroll moved to accept the landscape plan as submitted. The move was seconded and the Board voted unanimously to approve.

Michael Razza – 104 Prospect St.

Attorney Matthews stated she is requested a continuance to June 26, 2003. She stated the petitioner submitted plans to Tom Houston and some changes will be made.

National Development – 250 Royall St.

Attorney Richard Staiti, Mr. Steve Sesso, Mr. Peter Carbone, and Mr. Tighe came before the Board representing petitioner.

Attorney Staiti stated they have submitted the recommendations of the Planning Board and the Edwards & Kelcey report to the Board. He further stated there is a letter in file from the Friends of Little Blue supporting the petition. The Board had asked petitioner to try and resolve any issues with their neighbor at 150 Royall St., however, Atty. Staiti reported they were unable to do that. He stated they have lowered the height of the parking garage by 4'.

BLUE HILL 1594

Zoning Board of Appeals
Meeting of May 22, 2003
Page 3 of 10

Mr. Carroll stated he spoke with Mr. Ed Lynch, a member of the Conservation Commission and he stated the Commission is in support of the project.

Mr. Pando stated he would require elevation plans referenced in the decision, if approved.

Attorney Gary Lillienthal requested to speak. He stated he represents the Blue Hill Office Park at 150 Royall Street. He stated his client has spoken with the petitioner, however, there has been no resolution. He stated his client is concerned that the proposal is based on a misinterpretation of the Zoning By-law. He stated it is impossible to make a determination for site plan approval without looking at the entire site and in terms of vehicular safety, the entire site should be reviewed. There are 670 existing parking spaces that have never been occupied. After the building has full occupancy, he feels it will have a major affect on the traffic. He further stated the proposal obstructs his client's current view from the southwest. He stated there is a large area of impervious surface which has not been dealt with. He does not believe Sec. 2.15.2.C of the Zoning By-law regarding additional open space has been met.

Mr. Carroll inquired as to whether Atty. Lillienthal had any mitigation ideas in terms of landscape.

Atty. Lillienthal stated he has not participated in any discussions between his client and the petitioner and at this time does not have any specific requests.

Mr. Carroll stated he has heard from various boards and town officials and it seems they are in support of the petition.

Mr. Fitzgerald and Mr. Pando stated they have no further questions.

Mr. Fitzgerald moved the petition of National Development Corporation and Equiserve for a modification of Site Plan Approval, and Special Permit (Use) to construct a parking garage at 250 Royall Street, subject to the following conditions:

1. Petitioner shall adhere to the Planning Board recommendations dated May 21, 2003.
2. The garage capacity shall not exceed 380 parking spaces.
3. Construction shall be in accordance with a plan by VHB dated April 9, 2003 and revised on May 18, 2003.
4. Petitioner shall obtain approvals from all other boards as required.

BLUE HILL 1595

Zoning Board of Appeals
Meeting of May 22, 2003
Page 4 of 10

The move was seconded and the Board voted unanimously to grant.

Texaco – 731 Washington St.

Mr. Michael Loin came before the Board representing petitioner on the continued matter. He stated he received a positive recommendation from the Canton Center Design Review Board. He stated the Board recommended an overall reduction in height of the signage from 17.6' to 12'6". He stated that although the petitioner had received previous approval for a Dunkin' Donuts sign at the site, they are not going forward with that sign at the present time. He stated there is a note on the site plan stating that any signage not shown on the plan shall be removed.

Mr. Carroll stated the petitioner has illegal signage up now.

Mr. Loin stated he is aware of that, but the proposed site plan would give a tool for enforcement to the Building Inspector.

Mr. Fitzgerald stated the proposed sign at 12'6" at the proposed location would block visibility.

Mr. Pando suggested moving the sign back 15' from the property line, which would bring it into conformance with the by-law.

Mr. Loin agreed.

Mr. Fitzgerald moved the petition of Motiva Enterprises, LLC for a Special Permit (Sign) to replace the existing sign at 731 Washington St. be granted, in accordance with the Canton Center Design Review Board report, except for sign location, which shall be in accordance with Exhibit A filed and dated with this Board May 22, 2003, and in accordance with the submitted site plan dated May 14, 2003, with Exhibit A superceding. The move was seconded and the Board voted unanimously to approve.

Leo & Marie Sullivan – 515 Randolph St.

Mr. Alex Donovan and Mr. & Mrs. Sullivan came before the Board representing petitioner.

Mr. Donovan stated he is a family member and would be representing. He stated the Sullivan's are hoping to move the laundry and bathroom facilities to the first floor. He explained they are trying to get the entire living space, including a bedroom, on the first floor because they are elderly and have trouble getting up and down stairs.

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Zoning Board of Appeals
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Mr. Carroll stated the addition would encroach 15' into the rear yard setback.

Mr. Fitzgerald and Mr. Pando had no questions.

Mr. Fitzgerald moved the petition of Leo & Marie Sullivan for an Extension of Non-Conforming Building to construct an addition to the rear of the house be granted subject to the condition that addition encroach no further than 15' from the rear yard setback and petitioner shall submit a certified plot plan before obtaining a building permit.

The move was seconded and the Board voted unanimously to approve.

Eric Wade – 5 Cedarcrest Rd.

Mr. Eric Wade came before the Board representing himself. He stated he is requesting to extend the living area of his house and add one bedroom. The addition would be 28' by 34' with a full basement. He cited a growing family as his reason for the addition. He stated the addition would be 12' from the side yard setback and the required is 15'.

Mr. Fitzgerald moved the petition of Eric Wade for an Extension of Non-Conforming Building to construct a 28' by 34' addition which will encroach the side yard setback be granted, in accordance with the submitted plan by Leo J. Glover dated 4/7/03. The move was seconded and the Board voted unanimously to grant.

Michael Molway/F&R Realty Trust – 48 Pequit St.
FM Generator, Inc. – 35 Pequit St.

Attorney Suzanne Matthews and Mr. Michael Molway came before the Board representing petitioner.

Attorney Matthews stated the issue at 35 Pequit St. is a violation of a special permit issued by a 1997 decision. She stated it is her position that the petitioner is in compliance with that decision. She stated the issue raised by the Building Inspector was for outside storage of equipment. She stated the petitioner is using one section of the area for parking of generators, which are registered by the Registry of Motor Vehicles. She stated the other side of the site is used by Sunrise Erectors to store equipment and supplies. She stated the site is located in a Industrial District and the uses being conducted are allowed.

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Mr. Fitzgerald stated he visited the site earlier in the day and found generators everywhere and not within the area that was supposed to be marked off for storage of generators. He stated the whole area was filled with forklifts, generators, and construction supplies. He stated in his opinion it looks like a contractor's yard. He stated there is no doubt in his mind the petitioner is in violation of the 1997 decision.

Attorney Matthews stated the generators are allowed to be stored in one portion of the lot.

Mr. Fitzgerald stated that is correct. He stated the generators are presently covering at least twice the amount of area they were supposed to and the area they were supposed to be kept in is not marked as required. He stated there are all types of construction materials where the 13 striped parking spaces were supposed to be located. He stated the intent of the 1997 decision was to keep in mind that the site is located in a mixed industrial and residential neighborhood.

Mr. Quigley stated this site has been a problem since 1997. He stated at that time, the Board tried to accommodate the petitioner with the outside storage request, but it was supposed to be kept in certain striped areas, which has not been done. He stated the decision called for the area in front to be open, which also has not been done. He stated the petitioner has zero credibility with him at this point and he believes he is in gross violation of the 1997 decision. He stated he wants to address the violations before hearing petitioner's other proposal for 46-48 Pequit Street. He stated Mr. Leary, who was the third member that sat on the 1997 hearing, was very specific in the decision in terms of conditions. He stated there were six conditions in that decision. The Board asked for reasonable conditions to be met in that decision and he has not seen that.

Attorney Matthews stated she was not involved in the 1997 decision and cannot make any arguments regarding that.

Mr. Quigley stated as part of that decision, the Board reserved the right to amend, modify or revoke the decision.

Mr. Fitzgerald stated that since 1997, the petitioner was given benefit by this Board, the Board made a number of conditions and for the last six years, the petitioner has failed to do those things.

Mr. Quigley stated that a safety concern was the reason they asked for certain areas to remain open.

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Mr. Fitzgerald stated there is a record of correspondence between the petitioner and the Building Inspector in 1997 where the petitioner questioned the definitions of outside storage and other things. He stated there has been no spirit of cooperation from petitioner at all.

Mr. Pando stated he sees no correlation between what was approved by this Board in 1997 and shown on the plan and what he saw in his site visit this evening. He stated the conditions set forth in the 1997 decision were done with petitioner's acceptance and he should abide by them.

Attorney Matthews stated that the letter the petitioner received from the Building Inspector was for violations of outside storage and not parking. She stated the letter informed petitioner he could either remove the outside storage or modify the site plan.

Mr. Dom Duganiero, 62 Kings Rd., spoke regarding the petition. He stated he lived on Pequit Street for twenty-seven years and his mother and sister still live there. He stated the site plan dated 7/24/97 has never been complied with. The storage area was not clearly designated and the parking striping was never done. He stated he does not see how any parking could fit on the site. He stated he does not believe the parking that takes place on the southerly side of Pequit St. by the employees was ever approved by the Board. He stated there is no greenbelt to screen from abutting residences and the property is unsightly. He respectfully requested that the ZBA deny the request for outside storage or reduce the size of outside storage, that the outside storage be screened from residential abutters, that both tenants be required to submit site plans for loading and unloading of equipment, that the parking areas used by employees be striped and maintained for parking. He stated Pequit St. has many small children living there and it is used as a cut-through for traffic trying to avoid the light at the Sherman St./Washington St. intersection. He stated the school buses use Pequit St. every day and there are times when trucks from the petitioner's site are parked on the street and traffic cannot get by. He further requested the Board make a condition to decision that a sidewalk be completed in accordance with town rules and regulations by the petitioner.

Attorney Matthews stated the issue she has on appeal is based upon the notification given to Mr. Molway by the building inspector, regarding whether or not the petitioner is using the proposed parking area for outside storage and the building inspector gave him the option of removing it or modifying the site plan.

Mr. Fitzgerald stated both cases have been opened up and the Board has listened to petitioner's appeal. He stated the opinion of the Board is that there are existing violations. He suggested to hold the matter for 30 days, during which time the petitioner shall comply with the 1997 decision in all respects. After the petitioner has done that, if

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he finds he needs relief from this Board, the Board will have a continued hearing. In terms of 46-48 Pequit St., Mr. Fitzgerald suggested the petitioner clean up what he has done there. He stated the petitioner cannot have a storage area in a residential district. He requested petitioner remove the cars from the fenced-in area and the only cars that can park there are from 6:00 a.m. to 5:00 p.m. for contractors working at the site.

Attorney Matthews asked whether the Board would entertain a temporary permit.

Mr. Fitzgerald stated they would not.

Mr. Pando and Mr. Quigley agreed to the 30-day extension and to not issue any temporary permits.

Mr. Richard D'Attanasio, 87 Washington St., stated he is representing a direct abutter to the petition and he has an issue with loading and unloading of trucks on the street.

Mr. Fitzgerald stated there should be no trucks loading or unloading on the street and access to the property should be kept open for trucks to go in and out. He stated it is time for the petitioner to rectify the situation and if he does not, the Board will get the Building Inspector involved. He stated if the business has outgrown the site, perhaps the petitioner should look for a site more amenable to his business.

Mr. Fitzgerald continued the matter to June 26, 2003.

Famoso Foods – 146 Will Dr.

Attorney Paul Schneiders and Mr. Anthony Yebba came before the Board on the continued matter.

Mr. Horace MacNess and Mr. Tom Lyman, abutters to the petition, were also present.

Attorney Schneiders stated there will be five trucks per day that deliver and pick up, with 10 trucks total in the business.

Mr. Carroll suggested the petitioner post a bond to show good faith. He stated Mr. Lyman suggested the Board make a requirement in the decision that if legal action is necessary in the future to enforce conditions of the decision, petitioner shall pay for legal expenses.

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Mr. Fitzgerald stated he likes the idea of a condition regarding a deed restriction for no future expansion. He stated that although the petitioner offered to have the school buses removed from the site, he does not want that.

Mr. Pando stated he is impressed with the sincerity the petitioner has approached the issues with. He stated concerning the deed restriction, he would have no problem with a condition stating the petitioner could request no more than a 5 to 10% future expansion.

Attorney Schneiders stated he received letters from the two closest abutters strongly supporting the petition. He asked if the Board would want to add a condition to reserve the right to have the buses removed if necessary.

Mr. Carroll stated they would.

Mr. Fitzgerald moved the petition of Famoso Foods for a modification of Site Plan Approval, Special Permits for Access Drive and Reduced Parking, and an Extension of Non-conforming Building be granted so that petitioner can add a 20,500 s.f. addition to the existing building at 146 Will Drive and that said allowance of petition be subject to conditions as indicated in the letter from Attorney Schneiders dated 5/20/03 and in the representations at this meeting, construction to be done in accordance with the submitted site plan by Toomey Munson Associates, dated 12/20/03 with revision dates of 2/14/03, 3/3/03, and 4/4/03 and that a condition of the decision be that the Board grants this permit subject to review in two years, reserving the right at that time to modify or amend decision if necessary and the cost of enforcement proceedings to be paid by petitioner and petitioner to post a \$5000 bond. The move was seconded and the Board voted unanimously to grant.

Grover Estates – Washington St.

Attorney Schneiders and Mr. John Marini came before the Board representing petitioner.

Mr. Dean Miller and Ms. Kathy Keith were present representing the Design Review Board.

Mr. Miller stated he thinks the only question at this point is the issue of town acceptance of the deed in terms of parking lot and public ways. He said his Board approves of the landscape plan.

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Attorney Schneiders stated they added language worked out between the petitioner and Mr. Miller. He stated he submitted a proposed decision and a deed restriction labeled Exhibit A, regarding the condominium association maintaining landscaping. If there is a change or modification by the condominium owners, it would have to come before the ZBA and Design Review Board.

Board Business

Mr. Carroll moved to approve the Minutes of the Meetings of April 24, 2003, May 1, 2003, May 8, 2003, and May 15, 2003. The move was seconded and the Board voted unanimously to approve.

Adjournment

Mr. Pando moved to adjourn the Meeting at 10:25 p.m. The move was seconded and the Board voted unanimously to adjourn.

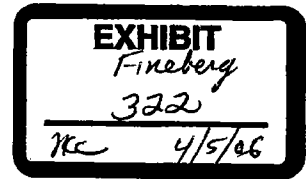
Respectfully submitted,

Paul B. Carroll
Chairman

/sf

BLUE HILL 1602

EXHIBIT 21



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BOSTON, MASSACHUSETTS 02110-1621
TELEPHONE (617) 790-3000
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September 7, 1999

Lydia G. Chesnick, Esq.
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TELECOMMUNICATION TRANSMITTAL

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Blue Hill
3033

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September 7, 1999

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VIA TELECOPIER

Andrew Cohen, Esq.
Schulte Roth & Zabel LLP
900 Third Avenue
New York, New York 10022

RE: 150 ROYALL STREET, CANTON, MA

Dear Andy:

As a follow-up to our discussion earlier today and your inquiry concerning prior securitized loans closed by entities owned or controlled by Gerald S. Fineberg, please be advised as follows:

1. In December of 1996, Mr. Fineberg closed eight loans with The Chase Manhattan Bank through its conduit program, all of which were securitized. The loans totaled in excess of \$75,000,000 and consisted of five loans each in the \$10,000,000 - \$16,000,000 range. In each case, Gerald S. Fineberg was the controlling principal owning between 95%-100% of the ownership interests in the respective owning entities.

2. From the period from December, 1997 through mid-1999, Mr. Fineberg closed approximately 15 loans with Heller Financial through its conduit program. All or substantially all of those loans were securitized. The loans totaled approximately \$45,000,000 and included at least two loans within their conduit program in the \$12,800,000 range. Again, Mr. Fineberg was the controlling principal.

3. In May of 1996, Mr. Fineberg closed a loan with GMAC through its conduit program. The loan was in the amount of \$11,400,000 and was subsequently securitized.

4. In 1999, Mr. Fineberg closed three transactions with GECC through its conduit program, the largest of which was \$7,800,000. The loans totaled approximately \$15,000,000. Again, Mr. Fineberg was the controlling principal.

**Blue Hill
3034**

BERNKOPF, GOODMAN & BASEMAN LLP

Andrew Cohen, Esq.
September 7, 1999
Page 2

We are in the process of obtaining the discussed documentation.

If you have any questions, please feel free to call me.

Very truly yours,



Lydia G. Chesnick

LGC/kf

cc: Gerald S. Fineberg

#184212 v1/14500/9547

**Blue Hill
3035**

EXHIBIT 22

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

BLUE HILLS OFFICE PARK LLC,)	
Plaintiff / Defendant-in-Counterclaim)	
)	
v.)	
)	
J.P. MORGAN CHASE BANK, as)	
Trustee for the Registered Holders of)	
Credit Suisse First Boston Mortgage)	
Pass-Through Certificates, Series 1999-C1)	Civil Action No. 05-CV-10506 (WGY)
Defendants)	
)	
and)	
)	
WILLIAM LANGELIER and)	
GERALD FINEBERG,)	
Defendant-in-Counterclaim)	
_____)	

EXPERT REPORT AND EXHIBITS OF
DR. KENNETH D. GARTRELL

March 31, 2006

Kenneth D. Gartrell, PhD CPA
Managing Director
LECG, LLC
350 Massachusetts Avenue
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available through discovery or otherwise. Therefore, this report does not necessarily reflect each and every matter on which I ultimately may form opinions in the course of my ongoing work. Additionally, as discovery in this case is incomplete as of the date of this report, I reserve the right to amend this report based on information adduced during any remaining discovery.

III. SUMMARY OF OPINIONS

18. I have formed four primary opinions in this case, To a reasonable degree of professional certainty, it is my opinion that:
19. At the date of foreclosure on or about November 19, 2004, the market conditions for commercial real estate in greater Boston's Central Business District ("CBD") and adjacent suburbs had returned to levels at, or above, conditions in existence in 1999 when the Property was refinanced at an FMV of \$42 million.
20. The FMV of the Property as of the date of foreclosure was no less than \$44.4 million. At that value and date, Blue Hills' equity in the Property was approximately \$5.8 million exclusive of mortgagee reserve deposits.
21. Based on reasonable expectations regarding the stream of future cash flows the Property will generate net of the cost of any upfront improvements which may be required to realize that cash flow stream, the Property presented an immediate cash deficit at foreclosure. However, the available cash on-hand in the mortgagee's required reserve accounts, in Blue Hills' own property accounts, and/or in available new cash from Blue Hills would have covered this cash deficit. Any new cash

required from Blue Hills would not have been immediately needed and would have been relatively low compared to its equity interest in the Property.

22. By foreclosing on the Property rather than recognizing its FMV and/or giving Blue Hills the opportunity to preserve its equity and the expected future cash flows from the Property, the Defendants caused economic harm to Blue Hills. Blue Hills lost its equity in the Property, the balances in the mortgagee required reserve accounts, and the tax benefits associated with holding the Property. In the aggregate, the direct economic damages to Blue Hills resulting from the foreclosure in November 2004 was at least \$14.9 million. **Exhibit 3** sets forth the economic damages calculation.

IV. BASIS OF OPINIONS

23. The rest of this report discusses the basis for each of my four primary opinions.
24. There are three generally-accepted approaches for deriving independent measures of the FMV of the Property as of the date of foreclosure on November 19, 2004: (1) the market index approach; (2) the market transactions approach; and (3) the income approach.
25. The market index approach calculates the current FMV of the Property by adjusting its known FMV at a point in time by using observed market values to estimate the value change between that point in time and the valuation date. This approach is a reliable way to account for changes in values over time.

26. The market transactions approach calculates the FMV of the Property by considering the prices paid in current transactions for comparable properties. This approach is a reliable way to account for variation in property values on an individual basis.
27. The income approach calculates the forward-looking expected future cash flows from owning and operating the property under foreseeable business and market conditions. This approach is a reliable way to account for the specific valuation effects of known economic considerations (e.g., occupancy rates, rents, operating expenses, improvements, etc.).
28. In this report, I discuss, and base my expert opinions on a combination of all three approaches to valuing the Property on or about the foreclosure date of November 19, 2004.

A. Prevailing Market Conditions Indicate an FMV of \$44.4 Million

29. As part of a refinancing with Blue Hills in the third quarter of 1999 (i.e., Q3 1999), the mortgagee had the Property independently appraised. The appraisal letter dated September 10, 1999 placed the value of the Property at \$42 million as of August 30, 1999.¹ This valuation was based on 273,863 square feet ("sf") of rentable space leased at the time for \$17.00/sf, which was lower than the prevailing market rents, ranging from \$17.37/sf to \$22.39/sf.² Based partly on this \$42 million valuation,

¹ Meredith & Grew Oncor International, Self-Contained Complete Appraisal Report, August 30, 1999 (LNR 03780-03781).

² Ibid.

Blue Hills and the Defendants entered into a mortgage refinancing loan for \$33.2 million on September 14, 1999.³

30. Between the time of the refinancing and the date of foreclosure on the Property on November 19, 2004, the commercial real estate market in the Boston metropolitan area had grown significantly until mid-2000 and had returned to levels at or above the property values observed in late 1999. The market reflected the expected adjustments resulting from the 2002 recession and had started to rebound. By Q4 2004, general economic conditions were in a strong pattern of recovery, the signs of which were evident in Boston area real estate prices.

1. Overall Market Conditions

31. The Boston area real estate market has been one of the strongest markets in the U.S. over the long term. The Greater Boston market is the economic and commercial center of New England as well as a strong secondary world financial center tied to New York City through the urban east coast network including Hartford, Connecticut and Providence, Rhode Island. In addition, Boston is one of the most popular U.S. destinations for domestic and international travel and tourism.
32. **Exhibit 4** shows market conditions in the greater Boston commercial real estate market. The figures and tables in Exhibit 4 show the relative market values, rents, capitalization rates, and trends in the downtown (CBD) and suburban markets. The market data reported in Exhibit 4 is published for the Boston metropolitan market by the National Real Estate Index within Global Real Analytics, a market leading

³ Mortgage Assignment of Leases and Rents and Security Agreement, September 14, 1999.

source of information regarding publicly-traded real estate equity and debt securities, property valuation, and local real estate markets.⁴

33. Figure 4.1 shows that the market enjoyed steady gains in property values and commercial rents from 1995 through late 2000. This expansion in values, accompanied by improvements in urban lifestyles, started as far back as the mid 1980s and resurged following the end of the 1992 recession. The trend lines in Figure 4.1 are displayed as indices based on the average selling prices and rental rates per square foot as of Q4 1995. Characteristic of long, steady periods of normal economic expansion, commercial real estate values and rents moved together, both nearly doubling at the peak of the expansion in mid-2000.
34. In general, property values and rents are closely linked. The relationship is somewhat definitional, since rents are the basis for the income generated from the operation of commercial real estate and it is the net profit from this rental income after consideration of related expenses that is capitalized as the value of the property. It is also normal for values to lead rents through time. The leads and lags between the two measures simply reflect the dynamics of the market and usually represent the more comprehensive and forward looking nature of prices. Prices or values reflect more comprehensive long-run decisions, and rents, which are usually just one element of long-term rental agreements, often reflect current conditions, are based on a shorter time horizon, and are influenced by inducements and incentives which are smoothed out relative to property values over the life of long-term lease agreements.

⁴ See, e.g., <http://www.graglobal.com>.

35. Figure 4.1 also shows the trends in market values and rents in the greater Boston commercial real estate market beyond 2000 also follow a normal pattern for a recession and recovery cycle, such as in the 2001 to 2004 period. The relative decline in property values ended in late 2004 at their 1999 levels, and values have rebounded since then. Notably, by the time of the foreclosure on the Property in Q4 2004, the greater Boston commercial real estate market was in full recovery and expansion. Indeed, Table 4.1 shows average prices per square foot had increased by 10.3% in downtown Boston and by 5.7% in the surrounding suburban markets since Q3 1999, the time at which the Defendants' appraiser valued the Property at \$42 million. That trend has continued from Q4 2004 up to the present, with values up an additional 13.3% and 6.74% in the downtown Boston and suburban markets, respectively.
36. Rental rates in Figure 4.1 separate from property values in a different but typical pattern. By early 2003, rents had fallen more, and more quickly, than property values. They had fallen to levels at or below the levels last observed in the 1994 to 1995 period. This pattern of the rents compared to the corresponding market values mostly reflects normal market dynamics. Rents are bound to be more volatile than prices since recessions are periods of business reorganization and restructuring. At such times, failing companies leave the market and are replaced by newcomers. With the decline in overall business activity, sharp temporary declines in rents occur because there are many new rental agreements and the rents are lowered in the early years of new leases as a competitive inducement to new tenants. Sometimes, there also are rent accommodations in existing leases to keep good

tenants from switching to new or better space as it becomes available when failing or reorganizing firms create additional capacity.

37. It is also notable that throughout the recession of 2002, commercial construction and expansion of property development continued at a high rate. Many new buildings were constructed and leased during that period. This is a strong indication that the recession was not expected to be severe or of long duration, and it reflects why rents fell so far and were only beginning a slow climb to catch up with observed market values by late 2004.
38. Figure 4.1 also makes the important point that by the time of foreclosure on the Property on November 19, 2004, the recession had ended and the current period of economic recovery was underway. While rents lagged market values, they were beginning to increase once again.
39. A reasonable and knowledgeable person looking at the overall market for commercial real estate in greater Boston as of Q4 2004 would have to conclude that: (1) property values were about to resume the increasing trends of the 1990s, and (2) rents on commercial real estate were likely to increase significantly in the near future to converge with increasing property values. The dominant question would not have been *whether* rental rates would rise, but rather *when* and *how quickly*. All things considered, it is more likely than not that rent levels would be expected to rise in the near-term to meet the market characterized by higher and increasing values.

2. Suburban Market Conditions

40. As in any major metropolitan market, suburban commercial real estate values and rents are linked to the downtown CBD. In Boston, the dynamics of that relationship are similar to conditions in New York City, Washington, DC, San Francisco and Chicago. Namely, the CBD is a leading indicator of what will happen in the suburban markets. Values in the CBD and in suburban markets are imperfect substitutes for each other. Hence, whenever the value differences between the CBD and suburban space exceed a certain threshold, investment shifts from one area to the other.
41. Unlike in many other American cities, downtown Boston truly is the economic “hub” of the region. There are many sociological, geographic and demographic reasons for the centrality of the Boston CBD to the regional economy, making the relationship between the Boston CBD and the suburban markets pivotal in establishing what reasonable expectations would have been for the Property at the time of foreclosure in late 2004.
42. Figure 4.2 shows the same market values and rents as in Figure 4.1, but it shows them indexed to a common value as of Q3 1999, the date of the \$33.2 million refinancing of the Property and the mortgagee’s \$42 million independent appraisal.
43. Figure 4.2 shows that by end of Q4 2004, there had been eleven straight quarters of increased commercial property values in the CBD with an increase in the rate of growth for each of the five prior quarters. While the return of the CBD was underway again after a brief decline in 2000 to 2001, the suburban values continued

to decline at a slow rate until early 2002. Then in the second quarter of 2004, the suburban market turned upward. Considering all relevant factors as of Q4 2004, the market appeared, and was expected, to be (and, indeed, was) stabilized at levels above Q3 1999 and was highly likely to increase further in step with the CBD trend. Likewise, rental rates in the suburban markets had stabilized in early 2003 and could be expected to increase once again going forward.

44. The dynamics that link the market in the CBD to the suburban market are clear. In this case, the Property is located such that this link is of even greater significance. The Property is located directly off state Route 128, south of the Massachusetts Turnpike, and virtually at the intersection of US Interstates 93 and 95. It is located directly on the primary routes of commerce between the Boston and Providence CBDs, as well as suburban business districts in towns such as Dedham, Needham, Norwood, Quincy, and Westwood. To the extent the nearing completion of the Big Dig and airport access via the Williams tunnel result in more efficient travel into and out of Boston, it adds a level of market value to commercial property throughout this commercial network above the overall market averages for suburban property values and rents.
45. As **Table 4.1** shows, suburban commercial real estate values rose more than 5.7 % from \$190.35 in Q3 1999 to \$201.19 in Q4 2004. For the reasons of the intra-market lags between the CBD and the suburban markets, as well as the normal lags between values and rents in transitional markets, the rents and the cap rates exhibit a different pattern. Coupled with the strong trend in the increase in values in the

CBD, the lag in the suburban cap rates indicates substantial upside in both suburban values and rents.

3. Practical Implications of Market Values for the Property

46. At the time of the \$33.2 million refinancing of the Property in Q3 1999, the corresponding \$42 million appraisal placed the Property's value at \$153/sf. Table 4.2 shows the prevailing market value at the time was \$190/sf, or approximately 19% higher. The appraisal noted that the "market" rent of \$17/sf determined by an arbitrator also was below prevailing market rents at the time.
47. The observed relationship between the Property's value and rent in Q3 1999 and prevailing market rates, taken together with the relative movement in the market since that time provides a benchmark for valuing the Property at other points in time, such as at the time of foreclosure in Q4 2004. The market index approach estimates the current FMV of the Property by adjusting its known FMV at a point in time (e.g., Q3 1999) by using the market index to estimate the change in asset value between that point in time and another date (e.g., Q4 2004). This approach is a reliable way to account for changes in commercial real estate values, on average, over time.
48. **Exhibit 5** shows the valuation of the Property using the market index approach. The calculation starts with the independently determined FMV of \$42 million for the Property in September 1999. Applying to this value the 5.7% increase observed in the market values of suburban commercial real estate between Q3 1999 and Q4 2004, yields a value of \$44.4 million at or about the time of foreclosure in

The DCF forecast projects annual cash flows over a finite (presumably foreseeable) period of time, and farther out on a normalized basis, called the terminal value or perpetuity value. Relative to the market-based valuation approaches, the DCF approach is simply a different means to same end, and the resulting value should reconcile to the market-based value.

1. Reasonable Expectations Indicate an FMV of At Least \$44.4 Million

71. In forecasting the Property's expected future cash flows, I calculated the DCF value from an *ex-ante* forecast based on the information known about the Property at the time of foreclosure (i.e., late 2004) regarding its rentable space, realized rental rates, prospective (single v. multiple) tenants, and so on. I relied on the latest realization of the Property's actual performance at the time as the best predictor of its future performance.⁷ On that basis, I forecasted the Property's rental revenue, operating expenses, capital improvements, capital expenditures, and resulting free cash flows on an annual basis for a ten-year forecast period plus a terminal value.
72. **Exhibit 7** shows the DCF calculations and the resulting \$44.4 million (\$162/sf) value. The tables in Exhibit 7 set forth all of the initial inputs used to start the valuation in 2004, the changes to the initial inputs for each subsequent year of the forecast period, and the discount rate used to express future cash flows at their present value as of late 2004.

⁷ This is consistent with the well-known "random walk" theory that values do not follow time trends, so the most current realizations best predict future values.

73. Specifically:

- Table 7.1 shows the results of the DCF calculations;
- Table 7.2 lists all of the initial input values I used in the DCF calculation; and
- Table 7.3 shows calculated and observed required rates of return to capital for real estate management companies, which informed the discount rate I applied to the cash flows I calculated for each time period.

74. The DCF calculation starts in late 2004 after the Equiserve lease expired and left the Property. Table 7.1 first projects rental income from the Property becoming “fully” occupied over a three-year period, starting at year-end 2005. In this context, “fully” occupied means eventually renting out 260,170 sf, or 95% of the Property’s total 273,863 sf of rentable space. I forecasted that the Property would not be fully rented until year-end 2007.⁸ This framework reflects the likelihood the Property would be rented to (approximately three equally-sized) multiple tenants, rather than a single tenant, such as Equiserve. That presumption was a reasonable expectation stated at the time,⁹ but it was not a certainty. In fact, it may have been possible to rent the Property to a new single tenant and avoid some of the expense of more extensively retrofitting it to accommodate multiple tenants.¹⁰

⁸ For example, Lennar Corp. (“Lennar”), the Special Servicer of the Property’s mortgage was advised it may have taken “24 months or more to tenant” the Property (LNR 03074).

⁹ Ibid. Lennar noted, “Large tenants (more than 100,000 sf) are very difficult to find these days.”

¹⁰ All of the nearby commercial properties have single tenants, e.g., Allied Domecq (Dunkin Donuts’ parent company), Equiserve, and Reebok.

75. I projected the upfront improvements required to convert the Property for multiple tenant use to cost \$30/sf, or more than \$8.2 million in total.¹¹ This cost is realized in increments over three years in direct proportion to the new tenants' entry over the same time period. The full cost of the upfront improvements would be realized by year-end 2007, at which time the Property would have been fully (i.e., 95%) occupied from that point forward. The \$8.2 million cost of improvements to attract and retain new tenants would have been in addition to the routine capital expenditures for normal operating fixed assets, which I projected at \$0.20/sf based on documented information in the factual record.¹²
76. Even with the significant upfront improvements I include in the DCF calculation, I projected the Property's rental income to start at the same rental rate as contained in the Equiserve lease which expired on July 31, 2004, \$17/sf, indexed to \$17.97 to account for the 5.7% increase in real estate market values observed between the time the \$17/sf rent was determined in late 1999 and the valuation date in late 2004.
77. I increased the rental rate by only 1.5% per year after 2004 to account for the expected upward trend in market rents I discussed previously. The disparity between prices and rents in late 2004 indicate that expected rent increases may have been much higher. Figure 6.1 and the underlying tables (Tables 6.6 and 6.7) show the actual increases in year-over-year rents within a sample of available lease agreements. Rents in the observed lease agreements increase from 1.4% per year to 5.0% per year, with an average increase of 3.4% per year a seven-year lease period.

¹¹ \$30/sf is at the high end of the range of improvement costs documented in the factual record. See, e.g., Frank Deposition, p. 158 (15-20%). Lennar assumed \$40/sf in its 2004 DCF calculation (LNR 03074).

¹² \$0.20/sf is the same capital expenditure used in Lennar's 2004 DCF calculation (LNR 03074).

78. The \$17/sf starting value in the Equiserve lease was set by arbitration at less than the prevailing market rents in 1999, which reportedly ranged from \$17.37/sf to \$22.39/sf.¹³ The prevailing market rate for commercial property in suburban Boston observed at the end of 2004 was \$23.26/sf (see Table 4.2), or 23% higher than the \$17.97/sf I applied in my DCF calculation. By indexing from the \$17/sf rate, my calculation implicitly assumes the Property would continue to rent for less than market rates throughout the forecast period – despite the significant upfront improvements I included which would have significantly increased the potential rents the Property could realize. To the extent the Property would have realized higher rents than I projected, it would generate higher cash flows and a higher FMV as well.¹⁴
79. Real estate taxes would have been incurred in the last half of 2004 although the Property was vacant. Thereafter, the tenants would cover a portion of the local property taxes in proportion to their share of total rented space. I forecasted property taxes at their actual 2004 level of \$632,725 per year (paid as \$158,181 quarterly). Likewise, the tenants would cover a pro-rata share of the management fee expenses, which I forecasted at 5% of rental income.
80. With that structure of revenues and expenses extended to each of the ten years in the forecast period, I calculated the free cash flow generated by the Property in each year in two steps: (1) I subtracted net operating expenses from revenue to yield

¹³ Meredith & Grew Oncor International, Self-Contained Complete Appraisal Report, August 30, 1999 (LNR 03780-03781).

¹⁴ As I discuss in the next section, I calculated the effect of one such scenario based on observed data for an adjacent property. It yields materially higher cash flows and FMV than I projected in Exhibit 7.

operating profit, and (2) I deducted capital expenditures from, and added back depreciation expense to, operating profit to yield free cash flow. I also calculated the value of free cash flows beyond the ten-year horizon of the forecast period. This terminal value represents the sale value of the Property at that future point in time.

81. As a final step in the valuation, I discounted the stream of expected future cash flows into an amount in present value terms as of year-end 2004. I discounted the cash flows at a 9% rate, which reflects the risks and required returns to real estate management companies at the time. This discount rate is consistent with contemporaneous figures published by Ibbotson Associates and with my own calculation using the well-known Capital Asset Pricing Mode ("CAPM")¹⁵ (See Table 7.3), which indicate a discount rate in the range of 8.8% to 9.0%.
82. The FMV of the Property based on its expected future cash flows as of year-end 2004 is the sum of the stream of expected future cash flows in present value terms. Simply put, the market value of this cash flow stream at year-end 2004 is the value of the Property based on its ability to generate cash flow going forward from that point at the projected levels.¹⁶ Based on the DCF forecast I described above, Table 7.1 shows that the FMV of the Property at year-end 2004 reconciles to the \$44.4 million value based on the indexed 1999 appraised value.

¹⁵ The CAPM relies on actual historical and generally accepted data about: (i) risk-free returns at the time of the foreclosure, (ii) historical incremental returns to risky assets in the market (i.e., market risk premium), and (iii) the relationship between the returns to real estate management companies relative to the overall market return (i.e., the market beta). See, e.g., Brealey and Myers (2000) at pp. 195-203.

¹⁶ A "positive net present value" project is one which yields a sufficient return to undertake because its internal rate of return exceeds the opportunity cost of capital. See, e.g., Brealey and Myers (2000) at pp. 93-150.

85. **Exhibit 8** shows the effect on the DCF calculation of making only those two changes. It forecasts the value of the Property under all of the same conditions as I applied in Exhibit 7, but it contemplates making even more upfront improvements (totaling \$11.0 million) in order to command higher rents. The \$21.25/sf rental rate I used in this calculation is still below the prevailing market rate at the time (\$23.26/sf), and it could have been reasonably expected for making such extensive improvements.
86. Holding all other factors constant in the DCF calculation, the Dunkin Donuts' lease terms for the adjacent property yields an FMV of \$51.8 million as of year-end 2004.
87. A total value of \$51.8 million corresponds to \$189/sf. This value is 17% higher than the baseline DCF value which I calculated, but it still reflects a discount of approximately 6% from the prevailing \$201/sf market value for suburban Boston commercial real estate at the time. Placing a \$51.8 million value on the Property at the time is no less reasonable than the \$44.4 million baseline DCF value. It simply reflects the additional return realized over time from investing more money in the Property upfront to make improvements.

D. The Foreclosure Resulted in Economic Harm to Blue Hills

88. All three valuation approaches I considered (i.e., market index, market transactions, and income) indicate the FMV of the Property as of the date of foreclosure on November 19, 2004 exceeded the value of Blue Hills' debt obligation under the mortgage on the Property as refinanced in September 1999. Therefore, the FMV of

the Property at the time did not provide a reasonable economic justification for the foreclosure.

89. The short-term cash deficits which would have been generated while waiting to find a new tenant(s) and making upfront improvements to the Property also did not justify the foreclosure. The cash funding requirements would have been small relative to the FMV of the Property; there were sufficient funds in both the mortgage reserves and in reserve at Blue Hills to cover the expected funding requirements; and/or Blue Hills would have had a strong economic incentive to pay for any remaining cash deficits out of pocket to preserve the company's equity interest in the Property.

1. There Were Sufficient Funds to Meet Cash Deficits

90. The DCF calculations set forth the expected future cash flows generated by the Property looking forward from the foreclosure date. For example, Table 7.1 shows negative free cash flows at year-end 2004 and 2005 as a result of the low occupancy rates and upfront improvement costs, but positive cash flows thereafter. The cash flows in each year account for the Property's rental income, operating expenses, and capital expenditures.
91. However, under the Mortgage and Security Agreement for the Property, Blue Hills also had to pay principal and interest expenses and fund several mortgage reserve accounts. Therefore, to avoid foreclosure, the Property would have had to generate sufficient cash flow to at least cover its costs, service its debt, and meet its reserve

requirements. Otherwise, Blue Hills would have had to contribute additional cash to cover any shortfall in the cash requirements each year or face foreclosure.

92. **Exhibits 9 and 10** show the cash requirements, sources of funds, and the ending cash balances the Property would have realized in the baseline DCF (Exhibit 9) and in the DCF based on Dunkin Donuts lease terms (Exhibit 10). The ending cash position shows the cash balance after accounting for all sources and uses of funds (i.e., paying all costs by drawing funds from all available accounts). For each year of the forecast period, the amount of ending cash indicates whether the Property would have produced cash in excess of costs, or whether there would have been a cash deficit to be covered in any year.
93. I calculated the final cash balance in two steps. First, I calculated available cash from operations by subtracting from the free cash flows in each DCF valuation (Tables 7.1 and 8.1) payments for taxes and insurance, principal and interest, and reserve funding requirements, in that order. Then I applied to any deficits in available cash each year (i.e., negative cash balances) the funds available for use in the mortgage reserves, the Blue Hills property accounts, and/or additional cash infusions from Blue Hills.
94. **Table 9.1** shows the resulting cash position for the baseline DCF valuation. It shows the Property, as valued at \$44.4 million, would have generated insufficient cash from operations to cover its taxes and insurance, principal and interest payments, and reserve requirements until after 2007. Fully (i.e., 95%) occupied in 2008 and thereafter, the Property would have yielded positive ending cash balances.

Table 9.2 shows the net effects of the corresponding accounting activity in the mortgage reserves and Blue Hills property accounts.

95. In 2004, there would have been sufficient funds in the various mortgage reserve accounts (approximately \$4.2 million) to cover the \$2.0 million cash deficit resulting from the lack of any rental income in the second half of the year to offset taxes/insurance and debt service expenses. In 2005, the cost of upfront improvements would have resulted in a larger (\$5.1 million) cash deficit, funded partially by the remaining mortgage reserves (\$2.1 million) and partially with funds from Blue Hills' own property accounts (\$3.0 million). In 2006, ongoing improvements would have resulted in a \$3.5 million deficit, funded almost entirely from the balance of the Blue Hills property accounts (\$2.7 million) and by the additional infusion of \$252,466 in cash. Once the Property was fully occupied in 2007, it would have generated sufficient cash to fund the mortgage reserves, but it would have drawn down the balances immediately, and Blue Hills would have had to contribute \$1.3 million in cash. Thereafter, the Property's ending cash position in each year would have been positive.
96. Put simply, the calculations on Table 9.1 show the Property would have had sufficient mortgage reserves to cover much of its initial cash deficits, and Blue Hills had in its own reserve accounts sufficient additional funds to cover all but \$1.5 million of the cash shortfalls of the first three years of operations after the foreclosure date and, even in the absence of those accounts, the two largest principals had sufficient net worth to fund any default if they wanted to. Blue Hills would not have had to contribute additional cash until 2006.

97. At that point, Blue Hills would have had the strong economic incentive – and presumably the ability – to make the required cash payments of \$252,466 in 2006 and \$1.3 million in 2007 to preserve its \$5.8 million equity interest in the Property going forward from the foreclosure date, to avoid the additional loss of its mortgage reserve balances and tax benefits of holding the Property, and to preserve the highly valuable option to capitalize on future increases in real estate values of the improved Property.
98. For example, capitalizing the expected operating income in Table 7.1 at the Anticipated Repayment Date of Blue Hills' mortgage on the Property at the end of 2009 implies a selling price in excess of \$43 million.¹⁷ Moreover, available market information indicates a strong upside potential for commercial real estate in suburban Boston (e.g., the resumption of increasing market values by year-end 2004, the likely significant future growth in rental rates to square with property values, the higher rents and purchase prices for adjacent properties, etc.). While I have not included the Property's significant forward-looking option value in my ultimate opinion of its market value of at least \$44.4 million at the time of foreclosure, such option value actually exists and would most likely have been valued by Blue Hills in its decision to preserve its equity in the Property. Considering all of these factors, the amount of new cash Blue Hills would have expected to contribute was dramatically less than the potential value losses and tax liability associated with losing its interest in the Property altogether.

¹⁷ Mortgage Note, September 14, 1999, B(1)(b). Table 7.1 projects operating income of \$5.0 million. Capitalized at the average cap rate of 8.8 over the forecast period with full occupancy yields a FMV of $8.8 \times \$5.0$ million, or \$43.1 million.

99. Table 10.1 shows the analogous cash position for the DCF valuation based on the Dunkin Donuts lease terms. Table 10.2 shows the corresponding reserve account activity. As in the baseline case, the Property, as valued at the higher \$51.8 million figure, would have generated insufficient cash from operations to cover its expenses until after 2007. Its initial cash deficits would have been slightly higher due to the higher cost of the upfront improvements. Thereafter, however, the Property would have yielded disproportionately higher positive ending cash balances.
100. The calculations in Table 10.1 show that at rents and tenant improvements based on the Dunkin Donuts lease, the mortgagee reserves and Blue Hills' Property accounts would have covered all but \$2.8 million of the deficits of the first three years of operations after the foreclosure date. As in the baseline case, Blue Hills would not have had to contribute additional cash until 2006. At that point, it again would have had the economic incentive, and presumed ability, to make the required cash payments of \$1.4 million in both 2006 and 2007 to preserve its much higher \$13.2 million equity interest in the Property going forward from the foreclosure date.
101. Therefore, it is my opinion that, given the opportunity, Blue Hills would have been willing and able to bridge any funding gap presented by the short-term vacancy in, and expected upfront improvements to, the Property.

2. Economic Damages to Blue Hills are At Least \$14.9 Million

102. By foreclosing on the Property rather than giving Blue Hills the opportunity to preserve its equity and the expected future cash flows from the Property, the Defendants caused economic harm to Blue Hills. Blue Hills lost entirely: (1) its

equity in the Property, (2) the balances in its mortgage reserve accounts, and (3) the tax benefits associated with holding the Property.

103. Exhibit 3 summarizes the economic damages to Blue Hills using a \$5.8 million equity value in the Property based on my ultimate valuation opinion. Adding to the equity value the \$4.2 million in lost mortgage reserve balances and the \$4.9 million in lost tax benefits,¹⁸ yields direct economic damages to Blue Hills of \$14.9 million at the date of foreclosure before considering the applicability or magnitude of any prejudgment interest at the discretion of the Court.

104. This is my opinion of economic damages to a reasonable degree of professional certainty based on all available information at this time. However, because that information includes several strong indications of upside potential in the Property's market value, Table 3.1 also shows an economic damages calculation starting from the higher \$13.2 million equity value based on the Dunkin Donuts lease terms. That equity value implies \$22.3 million in direct economic damages to Blue Hills.

V. CONCLUSION

105. My opinion to a reasonable degree of professional certainty is that the market conditions for commercial real estate in suburban Boston at the date of foreclosure on or about November 19, 2004, indicate a market value of \$44.4 million based on the \$42 million appraisal of September 1999. At a total FMV of \$44.4 million, Blue Hills' equity interest in the Property would have been \$5.8 million.

¹⁸ Expert Report of David Andelman, Exhibit B.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

BLUE HILLS OFFICE PARK LLC,)
Plaintiff / Defendant-in-Counterclaim)

v.)

J.P. MORGAN CHASE BANK, as)
Trustee for the Registered Holders of)
Credit Suisse First Boston Mortgage)
Pass-Through Certificates, Series 1999-C1)
Defendants)

Civil Action No. 05-CV-10506 (WGY)

and)

WILLIAM LANGELIER and)
GERALD FINEBERG,)
Defendant-in-Counterclaim)

**REBUTTAL REPORT OF
DR. KENNETH D. GARTRELL**

April 13, 2006

Kenneth D. Gartrell, PhD CPA
Managing Director
LECG, LLC
350 Massachusetts Avenue
Cambridge, MA 02139
Phone: 617.252.9994
Fax : 617.621.8018

I. BACKGROUND

1. My name is Kenneth D. Gartrell. I am an independent economic consultant and a Managing Director of LECG, LLC ("LECG"), a global economic consulting firm headquartered in Emeryville, California. My business address is 350 Massachusetts Avenue, Cambridge MA 02139. My business telephone number is 617-252-9994.
2. My affirmative expert report in this matter¹ ("Expert Report") detailed my professional qualifications and included as Exhibit 1 my full resume.
3. My Expert Report also set forth my independent expert opinions regarding the fair market value ("FMV") of the Blue Hills Office Park (the "Property") on or about the date of foreclosure on November 19, 2004 as a basis for calculating the economic damages to Blue Hills Office Park LLC ("Blue Hills") resulting from the loss of the Property. In my opinion, the Property's FMV at the date of foreclosure was at least \$44.4 million, with significant upside potential, and the corresponding economic damages to Blue Hills in lost equity, reserve balances, and capital gains taxes were at least \$14.9 million excluding interest.
4. The law firm Bernkopf Goodman LLP asked me to review the Expert Report of Eric S. Stotz, dated March 31, 2006, ("Stotz Report") filed on behalf of the Defendants to determine whether or not the assumptions, analytical approach, or findings of the Stotz Report warrant specific response.

¹ Expert Report and Exhibits of Dr. Kenneth D. Gartrell, dated March 31, 2006.

(g) In his new appraisal of the Property as of August 2003,¹¹ Mr. Stotz applies an even higher discount rate (12.25%) than he used for his October 2004 valuation, saying, "investors lowered their return requirements" from 2003 to 2004.¹² However, the two sources of data on which he relied reflect little or no change. The discount rates for the Boston market from the first source were 9% to 13% as of *both* Q2 2003 and Q3 2004; the second source reported discount rates ranging from 10% to 12% for Q2 2003 and from 9% to 12% for Q3 2004.¹³ Because Mr. Stotz admits he already assumed a rate at the "higher end" of the market in his October 2004 valuation, the data hardly justify another 25 percentage point increase to the discount rate for his August 2003 valuation.

(h) By assuming arbitrarily high discount rates, Mr. Stotz underestimated both the present value of the expected future cash flows the Property would generate and its ultimate future sale value. As a result, he significantly underestimated the Property's FMV.

12. Fourth, I disagree with Mr. Stotz regarding the value implications of the new parking garage adjacent to the Property. Construction of the parking garage most

¹¹ The underlying data on which I based my valuation as of late 2004 also would be sufficient to determine the FMV of the Property as of August 2003. Most likely, the value would not be materially different than the \$44.4 million calculated in my Expert Report as of November 2004. However, the observed increase in market values between Q3 1999 and Q3 2003 (6.7%) is greater than the change between Q3 1999 and Q4 2004 (5.7%), implying a higher expected rental rate at Q3 2003. A higher rental rate and a potentially lower discount rate would result in a higher FMV for the Property at Q3 2003 relative to Q4 2004.

¹² Stotz Report, p. 11.

¹³ Ibid. and Addendum to Stotz Report, p. 61.

likely had no material effect on the FMV of the Property, and it may have enhanced the Property's forward-looking option value.

- (a) Mr. Stotz simply asserts the parking garage "negatively impacted" the FMV of the Property.¹⁴ He does not attempt to quantify this effect; he just states, "it is extremely difficult to accurately measure."¹⁵ Instead of an informed analysis, Mr. Stotz bases his opinion on "the sum of [his] experience" and on "various discussions with other real estate professionals."¹⁶ His opinion lacks sufficient factual basis and ignores important facts on record and relevant economic factors to the contrary.
- (b) Mr. Stotz assumes the value of the Property would be diminished because its view of the nearby highway would be partially blocked, which he argues "would increase traffic congestion" near the Property, "makes finding the building more difficult," and makes it "more difficult" for employees in the building to monitor and avoid heavy traffic on the highway.¹⁷
- (c) However, there is no evidence any such conditions actually exist or, to the extent they do, have any material effect on the FMV of the Property.
- (d) Whether the people working in the adjacent building park in an open lot or a covered building has no objectively clear or significant effect on the day-to-

¹⁴ Stotz Report, p. 14.

¹⁵ Ibid., p. 13.

¹⁶ Ibid. Mr. Stotz does not identify anyone with whom he ostensibly spoke about the parking garage, so there is no way to independently evaluate the accuracy or reliability of such persons or discussions.

¹⁷ Ibid., p. 14.

EXHIBIT 23

Form 1065		U.S. Return of Partnership Income		OMB No. 1545-0099
Department of the Treasury Internal Revenue Service		For calendar year 2004, or tax year beginning and ending ▶ See separate instructions.		2004
Principal business activity	Use the IRS label.	Name of partnership	D Employer identification number	
REAL ESTATE	Other- wise, print or type.	ROYALL ASSOCIATES REALTY TRUST	04-2973514	
Principal product or service		Number, street, and room or suite no. If a P.O. box, see page 14 of the instructions.	E Date business started	
RENTALS		ONE WASHINGTON ST	6/13/1987	
Business code number		City or town, state, and ZIP code	F Total assets (see page 14 of the instructions)	
531120		WELLESLEY MA 02481	\$ 26,853,987	

Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended return

Check accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶

Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year ▶

6

Instructions: Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

1a	Gross receipts or sales	1a		1g	
b	Less returns and allowances	1b			
2	Cost of goods sold (Schedule A, line 8)			2	
3	Gross profit. Subtract line 2 from line 1c			3	
4	Ordinary income (loss) from other partnerships, estates, and trusts (attach sch.)			4	
5	Net farm profit (loss) (attach Schedule F (Form 1040))			5	
6	Net gain (loss) from Form 4797, Part II, line 17			6	
7	Other income (loss) (attach statement)			7	
8	Total income (loss). Combine lines 3 through 7			8	
9	Salaries and wages (other than to partners) (less employment credits)			9	
10	Guaranteed payments to partners			10	
11	Repairs and maintenance			11	
12	Bad debts			12	
13	Rent			13	
14	Taxes and licenses			14	
15	Interest			15	
16a	Depreciation (if required, attach Form 4582)	16a	662,174	16b	662,174
b	Less depreciation reported on Schedule A and elsewhere on return	16b		16c	0
17	Depletion (Do not deduct oil and gas depletion.)			17	
18	Retirement plans, etc.			18	
19	Employee benefit programs			19	
20	Other deductions (attach statement)			20	
21	Total deductions. Add the amounts shown in the far right column for lines 9 through 20			21	0
22	Ordinary business income (loss). Subtract line 21 from line 8			22	

Preparer's signature	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member) is based on all information of which preparer has any knowledge.		May the IRS discuss this return with the preparer shown below (see instructions)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
	Signature of general partner or limited liability company member manager		Date	
Preparer's signature	RICHARD HASSEY	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
Firm's name (or yours if self-employed), address, and ZIP code	ROTFIELD & HASSEY, LLP, CPAS 15 COURT SQUARE BOSTON, MA 02108	Phone no.	617-523-7846	Preparer's EIN
				04-2802193

Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

Form 1065 (2004)

BLUE HILL
5532

1065		U.S. Return of Partnership Income		OMB No. 1545-0099
Department of the Treasury Internal Revenue Service		For calendar year 2004, or tax year beginning and ending ▶ See separate instructions.		2004
Principal business activity	Use the IRS label.	Name of partnership	D Employer identification number	
REAL ESTATE	Other-	ROYALL ASSOCIATES REALTY TRUST	04-2973514	
Special product or service	wise,	Number, street, and room or suite no. If a P.O. box, see page 14 of the instructions.	E Date business started	
RENTALS	print	ONE WASHINGTON ST	6/13/1987	
Business code number	or type.	City or town, state, and ZIP code	F Total income (see page 14 of the instructions)	
531120		WELLESLEY MA 02481	\$ 26,853,987	

Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended return
 Check accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) ▶
 Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year ▶ 6

Instructions: Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

Income	1a Gross receipts or sales	1a		1a
	b Less returns and allowances	1b		1b
	2 Cost of goods sold (Schedule A, line 8)			2
	3 Gross profit. Subtract line 2 from line 1a			3
	4 Ordinary income (loss) from other partnerships, estates, and trusts (attach sch.)			4
	5 Net farm profit (loss) (attach Schedule F (Form 1040))			5
Deductions	6 Net gain (loss) from Form 4797, Part II, line 17			6
	7 Other income (loss) (attach statement)			7
	8 Total income (loss). Combine lines 3 through 7			8
	9 Salaries and wages (other than to partners) (less employment credits)			9
	10 Guaranteed payments to partners			10
	11 Repairs and maintenance			11
	12 Bad debts			12
	13 Rent			13
	14 Taxes and licenses			14
	15 Interest			15
Other	16a Depreciation (if required, attach Form 4562)	16a	662,174	16a
	b Less depreciation reported on Schedule A and elsewhere on return	16b	662,174	16b
	17 Depletion (Do not deduct oil and gas depletion.)			17
	18 Retirement plans, etc.			18
	19 Employee benefit programs			19
	20 Other deductions (attach statement)			20
	21 Total deductions. Add the amounts shown in the far right column for lines 9 through 20			21
22 Ordinary business income (loss). Subtract line 21 from line 8			22	

Signatures	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member) is based on all information of which preparer has any knowledge.		May the IRS discuss this return with the preparer shown below (see instructions)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
	Signature of general partner or limited liability company member manager		Date	
Preparer's Only	Preparer's signature	Date	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN
	Firm's name (or yours if self-employed), address, and ZIP code			FIN ▶ 04-2802193
RICHARD HASSEY				617-523-7846
RUTFIELD & HASSEY, LLP, CPAS				
15 COURT SQUARE				
BOSTON, MA 02108				

Preparer's Act and Paperwork Reduction Act Notice, see separate instructions.

Form 1065 (2004)

BLUE HILL
5533

Form 1065 (2004) **ROYALL ASSOCIATES REALTY TRUST** 04-29/3514 Page 2**Part II Cost of Goods Sold (see page 19 of the instructions)**

1	Inventory at beginning of year	1	
2	Purchases less cost of items withdrawn for personal use	2	
3	Cost of labor	3	
4	Additional section 263A costs (attach statement)	4	
	Other costs (attach statement)	5	
6	Total. Add lines 1 through 5	6	
7	Inventory at end of year	7	
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2.	8	

9a Check all methods used for valuing closing inventory:

(i) ☐ Cost as described in Regulations section 1.471-3

(ii) ☐ Lower of cost or market as described in Regulations section 1.471-4

(iii) ☐ Other (specify method used and attach explanation) ▶

9b Check this box if there was a writedown of "abnormal" goods as described in Regulations section 1.471-2(c) ▶ ☐ Yes ☐ No

9c Check this box if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ▶ ☐ Yes ☐ No

9d Do the rules of section 263A (for property produced or acquired for resale) apply to the partnership? ☐ Yes ☐ No

9e Was there any change in determining quantities, cost, or valuations between opening and closing inventory? ☐ Yes ☐ No

If "Yes," attach explanation.

Part III Other Information

	Yes	No
1 What type of entity is filing this return? Check the applicable box:		
a <input checked="" type="checkbox"/> Domestic general partnership		
b <input type="checkbox"/> Domestic limited liability company		
c <input type="checkbox"/> Foreign partnership		
d <input type="checkbox"/> Domestic limited liability partnership		
e <input type="checkbox"/> Other ▶		
2 Are any partners in this partnership also partnerships?		X
3 During the partnership's tax year, did the partnership own any interest in another partnership or in any foreign entity that was disregarded as an entity separate from its owner under Regulations sections 301.7701-2 and 301.7701-3? If yes, see instructions for required attachment		X
4 Did the partnership file Form 8883, Election of Partnership Level Tax Treatment, or an election statement under section 6231(a)(1)(B)(ii) for partnership-level tax treatment, that is in effect for this tax year? See Form 8893 for more details		X
5 Does this partnership meet all three of the following requirements?		
a The partnership's total receipts for the tax year were less than \$250,000;		
b The partnership's total assets at the end of the tax year were less than \$800,000; and		
Schedules K-1 are filed with the return and furnished to the partners on or before the due date (including extensions) for the partnership return.		
If "Yes," the partnership is not required to complete Schedules L, M-1, and M-2; item F on page 1 of Form 1065; or item N on Schedule K-1.		X
6 Does this partnership have any foreign partners? If "Yes," the partnership may have to file Forms 8804, 8805 and 8813. See page 20 of the instructions		X
7 Is this partnership a publicly traded partnership as defined in section 469(k)(2)?		X
8 Has this partnership filed, or is it required to file, Form 8284, Application for Registration of a Tax Shelter?		X
9 At any time during calendar year 2004, did the partnership have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? See page 20 of the instructions for exceptions and filing requirements for Form TD F 90-22.1. If "Yes," enter the name of the foreign country. ▶		X
10 During the tax year, did the partnership receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," the partnership may have to file Form 3820. See page 21 of the instructions		X
Was there a distribution of property or a transfer (e.g., by sale or death) of a partnership interest during the tax year? If "Yes," you may elect to adjust the basis of the partnership's assets under section 754 by attaching the statement described under Elections Made By the Partnership on page 9 of the instructions		X
Enter the number of Forms 8855, Return of U.S. Persons With Respect to Certain Foreign Partnerships, attached to this return ▶		

Designation of Tax Matters Partner (see page 21 of the instructions)

Enter below the general partner designated as the tax matters partner (TMP) for the tax year of this return:

name of designated TMP ▶ **GERALD FINEBERG** Identifying number of TMP ▶ **004-30-8671**

address of designated TMP ▶ **ONE WASHINGTON ST.**

WELLESLEY MA 02484

Form 1065 (2004)

**BLUE HILL
5534**

Form 1065 (2004) ROYALL ASSOCIATES REALTY TRUST 04-2973514 Page 3			
Partners' Distributive Share Items		Total amount	
Income (loss)	1 Ordinary business income (loss) (page 1, line 22)	1	
	2 Net rental real estate income (loss) (attach Form 8825)	2	151,060
	3a Other gross rental income (loss)	3a	
	b Expenses from other rental activities (attach statement)	3b	
	c Other net rental income (loss). Subtract line 3b from line 3a	3c	
	4 Guaranteed payments	4	
	5 Interest income	5	59,324
	6 Dividends: a Ordinary dividends	6a	2,240
	b Qualified dividends	6b	
	7 Royalties	7	
	8 Net short-term capital gain (loss) (attach Schedule D (Form 1065))	8	
Income (loss)	9a Net long-term capital gain (loss) (attach Schedule D (Form 1065))	9a	3,956
	b Collectibles (28%) gain (loss)	9b	
	c Unrecaptured section 1231 gain (net, stmt)	9c	
	10 Net section 1231 gain (loss) (attach Form 4797)	10	
	11 Other income (loss) (attach statement)	11	
Deductions	12 Section 179 deduction (attach Form 4562)	12	
	13a Contributions	13a	
	b Deductions related to portfolio income (attach statement)	13b	
	c Investment interest expense	13c	
	d Section 66(e)(2) expenditures: (1) Type (2) Amount	13d	
Off-employment	e Other deductions (attach statement)	13e	
	14a Net earnings (loss) from self-employment	14a	0
	b Gross farming or fishing income	14b	
Credits & credit recapture	c Gross nonfarm income	14c	
	15a Low-income housing credit (section 42(J)(5))	15a	
	b Low-income housing credit (other)	15b	
	c Qualified rehabilitation expenditures (rental real estate) (attach Form 3458)	15c	
	d Other rental real estate credits	15d	
	e Other rental credits	15e	
Foreign transactions	f Other credits and credit recapture (attach statement)	15f	
	16a Name of country or U.S. possession	16a	
	b Gross income from all sources	16b	
	c Gross income sourced at partner level	16c	
	d Passive (1) Type (2) Amount	16d	
	e Deductions allocated and apportioned at partner level	16e	
	f Interest expense (1) Type (2) Amount	16f	
	g Deductions allocated and apportioned at partnership level to foreign source income	16g	
	h Foreign taxes: (1) Paid (2) Accrued	16h	
	i Reduction in taxes available for credit (attach statement)	16i	
Alternative minimum tax (AMT) items	17a Post-1986 depreciation adjustment	17a	
	b Adjusted gain or loss	17b	
	c Depletion (other than oil and gas)	17c	
	d Oil, gas, and geothermal properties - gross income	17d	
	e Oil, gas, and geothermal properties - deductions	17e	
	f Other AMT items (attach statement)	17f	
Other	18a Tax-exempt interest income	18a	
	b Other tax-exempt income	18b	63,256
	c Nondeductible expenses	18c	181,992
	19a Distributions of cash and marketable securities	19a	
	b Distributions of other property	19b	
	20a Investment income	20a	61,564
Other	b Investment expenses	20b	
	c Other items and amounts (attach statement)		

Form 1065 (2004)

BLUE HILL
5535

Analysis of Net Income (Loss)

1 Net income (loss). Combine Schedule K, lines 1 through 11. From the result, subtract the sum of Schedule K, lines 12 through 13e, and 16(1), and 18(2)						1	216,580
2 Analysis by partner type:	(i) Corporate	(ii) Individual (active)	(iii) Individual (passive)	(iv) Partnership	(v) Exempt organization	(vi) Nominee/Other	
a General partners			216,580				
b Limited partners							

Schedules L, M-1, and M-2 are not required if Question 5 of Schedule B is answered "Yes."

Balance Sheets per Books		Beginning of tax year		End of tax year	
Assets		(a)	(b)	(c)	(d)
1 Cash			2,166,208		3,804,741
2a Trade notes and accounts receivable					
b Less allowance for bad debts					
3 Inventories					
4 U.S. government obligations					
5 Tax-exempt securities					
6 Other current assets (attach statement)	SEE STMT 3		5,337,106		4,460,903
7 Mortgage and real estate loans					
8 Other investments (attach statement)					
9a Buildings and other depreciable assets		34,131,370		34,131,370	
b Less accumulated depreciation		18,253,970	15,877,400	19,072,070	15,059,300
10a Depletable assets					
b Less accumulated depletion					
11 Land (net of any amortization)			3,119,071		3,119,071
12a Intangible assets (amortizable only)		517,800		409,972	
b Less accumulated amortization		90,366	427,434		409,972
13 Other assets (attach statement)					
14 Total assets			26,927,219		26,853,987
Liabilities and Capital					
15 Accounts payable					
16 Mortgages, notes, bonds payable in less than 1 year			297,902		
17 Other current liabilities (attach statement)			50,000		50,000
18 All nonrecourse loans					
19 Mortgages, notes, bonds payable in 1 year or more (attach statement)			40,146,796		40,273,621
20 Partners' capital accounts			-13,567,479		-13,469,634
21 Total liabilities and capital			26,927,219		26,853,987

Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Net income (loss) per books	97,845	8 Income recorded on books this year not included on Schedule K, lines 1 through 11 (Itemize):	
Income included on Sch. K, lines 1, 2, 9c, 5, 6a, 7, 8, 9a, 10, and 11, not recorded on books this year (Itemize):		a Tax-exempt interest \$	
		SEE STATEMENT 5	63,256
Guaranteed payments (other than health insurance)		7 Deductions included on Schedule K, lines 1 through 13e, 16(1), and 18(2), not charged against book income this year (Itemize):	
Expenses recorded on books this year not included on Schedule K, lines 1 through 13e, 16(1), and 18(2) (Itemize):		a Depreciation \$	
a Depreciation \$		SEE STATEMENT 6	1
b Travel and entertainment \$			1
SEE STATEMENT 4		8 Add lines 6 and 7	63,257
181,992	181,992	9 Income (loss) (Analysis of Net Income (Loss), line 1). Subtract line 8 from line 5	216,580
Add lines 1 through 4	279,837		

Analysis of Partners' Capital Accounts

Balance at beginning of year	-13,567,479	6 Distributions: a Cash	
Capital contributed: a Cash		b Property	
b Property		7 Other decreases (Itemize):	
Net income (loss) per books	97,845		
Other increases (Itemize):		8 Add lines 6 and 7	
Add lines 1 through 4	-13,469,634	9 Balance at end of year. Subtract line 8 from line 5	-13,469,634

Form 1065 (2004)

BLUE HILL
5536

Form **8825****Rental Real Estate Income and Expenses of a
Partnership or an S Corporation**

OMB No. 1545-1186

Department of the Treasury
Internal Revenue Service

▶ See instructions on back.

▶ Attach to Form 1065, Form 1065-B, or Form 1120S.

2004

Name

Employer identification number

04-2973514**YALL ASSOCIATES REALTY TRUST**

Show the kind and location of each property. See page 2 for additional properties.

150 ROYALL STREET

A

B

C

D

Properties**Rental Real Estate Income**

Gross rents

2 4,087,916**Rental Real Estate Expenses**

Advertising

3 208

Auto and travel

4

Cleaning and maintenance

5 140,950

Commissions

6 10,394

Insurance

7 174,532

Legal and other professional fees

8 77,188

Interest

9 1,611,488

Repairs

10 48,693

Taxes

11 291,313

Utilities

12 550,402

Wages and salaries

13

Depreciation (see instructions)

14 662,174

Other (list) ▶

SEE STATEMENT 7**15 369,514**

Total expenses for each property.

Add lines 3 through 15

16 3,936,856

Total gross rents. Add gross rents from line 2, columns A through H

17 4,087,916

Total expenses. Add total expenses from line 16, columns A through H

18 3,936,856

Net gain (loss) from Form 4797, Part II, line 17, from the disposition of property from rental real estate activities

19

a Net income (loss) from rental real estate activities from partnerships, estates, and trusts in which this partnership or S corporation is a partner or beneficiary (from Schedule K-1)

20a

b Identify below the partnerships, estates, or trusts from which net income (loss) is shown on line 20a. Attach a schedule if more space is needed:

(1) Name

(2) Employer ID number

Net rental real estate income (loss). Combine lines 17 through 20a. Enter the result here and on:

• Form 1065 or 1120S: Schedule K, line 2, or

• Form 1065-B: Part I, line 4

21**151,060**

Paperwork Reduction Act Notice, see back of form.

Form **8825** (2004)**BLUE HILL
5537**

SCHEDULE D
Form 1065

Capital Gains and Losses

OMB No. 1545-0099

2004

Department of the Treasury
Internal Revenue Service
Name of partnership

▶ Attach to Form 1065.

Employer identification number

YALL ASSOCIATES REALTY TRUST

04-2973514

Part I Short-Term Capital Gains and Losses—Assets Held 1 Year or Less

(a) Description of property (e.g., 100 shares of "Z" Co.)	(b) Date acquired (month, day, year)	(c) Date sold (month, day, year)	(d) Sales price (see instructions)	(e) Cost or other basis (see instructions)	(f) Gain or (loss) Subtract (e) from (d)
1 Short-term capital gain from installment sales from Form 5252, line 26 or 37					2
2 Short-term capital gain (loss) from like-kind exchanges from Form 8824					3
3 Partnership's share of net short-term capital gain (loss), including specially allocated short-term capital gains (losses), from other partnerships, estates, and trusts					4
4 Net short-term capital gain or (loss). Combine lines 1 through 4 in column (f). Enter here and on Form 1065, Schedule K, line 8 or 11					5

Part II Long-Term Capital Gains and Losses—Assets Held More Than 1 Year

(a) Description of property (e.g., 100 shares of "Z" Co.)	(b) Date acquired (month, day, year)	(c) Date sold (month, day, year)	(d) Sales price (see instructions)	(e) Cost or other basis (see instructions)	(f) Gain or (loss) Subtract (e) from (d)
5 Long-term capital gain from installment sales from Form 5252, line 26 or 37					7
6 Long-term capital gain (loss) from like-kind exchanges from Form 8824					8
7 Partnership's share of net long-term capital gain (loss), including specially allocated long-term capital gains (losses), from other partnerships, estates, and trusts					9
8 Capital gain distributions					10 3,956
9 Net long-term capital gain or (loss). Combine lines 5 through 10 in column (f). Enter here and on Form 1065, Schedule K, line 9a or 11					11 3,956

Privacy Act and Paperwork Reduction Act Notice, see the Instructions for Form 1065.

Schedule D (Form 1065) 2004

BLUE HILL
5538

PARTNER# 1
Schedule K-1
Form 1065

U.S. Department of the Treasury
Internal Revenue Service

2004

Tax year beginning 1/01/2004
and ending 12/31/2004

☐ Final K-1

☐ Amended K-1

OMB No. 1545-0099

**Partner's Share of Income, Deductions,
Credits, etc.** See back of form and separate instructions.

A Partnership's employer identification number
04-2973514

B Partnership's name, address, city, state, and ZIP code
ROYALL ASSOCIATES REALTY TRUST
ONE WASHINGTON ST
WELLESLEY MA 02481

C IRS Center where partnership filed return
OGDEN, UT 84201-0011

D ☐ Check if this is a publicly traded partnership (PTP)

E ☐ Tax shelter registration number, if any

F ☐ Check if Form 8271 is attached

G Partner's identifying number
011-28-6653

H Partner's name, address, city, state, and ZIP code
DANIEL FRANK
286 CLARK ROAD
BROOKLINE MA 02146

I ☒ General partner or LLC member-manager ☐ Limited partner or other LLC member

J ☒ Domestic partner ☐ Foreign partner

K What type of entity is this partner? INDIVIDUAL

L Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	2.500000 %	2.500000 %
Loss	2.500000 %	2.500000 %
Capital	2.500000 %	2.500000 %

M Partner's share of liabilities at year end:

Nonrecourse \$

Qualified nonrecourse financing \$

Recourse \$ 1,008,091

N Partner's capital account analysis:

Beginning capital account \$ -358,040

Capital contributed during the year \$

Current year increase (decrease) \$ 2,446

Withdrawals & distributions \$

Ending capital account \$ -355,594

☒ Tax basis ☐ GAAP ☐ Section 704(b) book

☐ Other (explain)

1 Ordinary business income (loss)	15 Credits & credit recapture
2 Net rental real estate income (loss)	
3 Other net rental income (loss)	16 Foreign transactions
4 Guaranteed payment	
5 Interest income	
5a Ordinary dividends	
5b Qualified dividends	
7 Royalties	
8 Net short-term capital gain (loss)	
8a Net long-term capital gain (loss)	17 Alternative minimum tax (AMT) items
8b Collectibles (28%) gain (loss)	
8c Unrecaptured section 1250 gain	
10 Net section 1231 gain (loss)	18 Tax-exempt income and nondeductible expenses
11 Other income (loss)	B* <u>1,582</u>
	C* <u>652</u>
12 Section 179 deduction	19 Distributions
13 Other deductions	20 Other information
	A <u>1,539</u>
14 Self-employment earnings (loss)	

*** See attached statement for additional information.**

FOR IRS USE ONLY



Privacy Act and Paperwork Reduction Act Notice, see Instructions for Form 1065.

Schedule K-1 (Form 1065) 2004

A

BLUE HILL
5539

PARTNER'S
Schedule K-1
(Form 1065)

 Department of the Treasury
 Internal Revenue Service
2004
 Tax year beginning 1/01/2004
 and ending 12/31/2004
Partner's Share of Income, Deductions,
Losses, etc. ▶ See back of form and separate instructions.

A Partnership's employer identification number
04-2973514

B Partnership's name, address, city, state, and ZIP code
ROYALL ASSOCIATES REALTY TRUST
ONE WASHINGTON ST
WELLESLEY MA 02481

C IRS Center where partnership filed return
OGDEN, UT 84201-0011

D ☐ Check if this is a publicly traded partnership (PTP)

E ☐ Tax shelter registration number, if any

F ☐ Check if Form 8271 is attached

G Partner's identifying number
004-30-8671

H Partner's name, address, city, state, and ZIP code
GERALD FINEBERG
ONE WASHINGTON ST.
WELLESLEY MA 02484

☒ General partner or LLC member-manager

☐ Limited partner or other LLC member

I ☒ Domestic partner

☐ Foreign partner

K What type of entity is this partner? INDIVIDUAL

L Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	42.500000 %	42.500000 %
Loss	42.500000 %	42.500000 %
Capital	42.500000 %	42.500000 %

M Partner's share of liabilities at year end:

Nonrecourse	\$
Qualified nonrecourse financing	\$
Recourse	\$ <u>17,137,539</u>

N Partner's capital account analysis:

Beginning capital account	\$ <u>-5,931,445</u>
Capital contributed during the year	\$
Current year increase (decrease)	\$ <u>41,584</u>
Withdrawals & distributions	\$
Ending capital account	\$ <u>-5,889,861</u>

☒ Tax basis

☐ GAAP

☐ Section 704(b) book

☐ Other (explain)

☐ Form K-1

☐ Amended K-1

OMB No. 1545-0045

1 Ordinary business income (loss)	15 Credits & credit recapture
2 Net rental real estate income (loss) * <u>-2,068</u>	
3 Other net rental income (loss)	16 Foreign transactions
4 Guaranteed payments	
5 Interest income <u>25,213</u>	
6a Ordinary dividends <u>952</u>	
6b Qualified dividends	
7 Royalties	
8 Net short-term capital gain (loss)	
9a Net long-term capital gain (loss) <u>1,681</u>	17 Alternative minimum tax (AMT) items
9b Collectibles (28%) gain (loss)	
9c Unrecaptured section 1250 gain	
10 Net section 1231 gain (loss)	18 Tax-exempt income and nondeductible expenses
11 Other income (loss)	B* <u>26,884</u>
	C* <u>11,078</u>
12 Section 179 deduction	19 Distributions
13 Other deductions	20 Other information
	A <u>26,165</u>
14 Self-employment earnings (loss)	

* See attached statement for additional information.

FOR USE ONLY


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 5540

PARTNER# 3
Schedule K-1
Form 1065Department of the Treasury
Internal Revenue Service

2004

Tax year beginning 1/01/2004
and ending 12/31/2004

Final K-1

Amended K-1

OMB No. 1545-0096

Partner's Share of Income, Deductions,
Credits, etc.

See back of form and separate instructions.

A Partnership's employer identification number

04-2973514

B Partnership's name, address, city, state, and ZIP code

ROYALL ASSOCIATES REALTY TRUST

ONE WASHINGTON ST
WELLESLEY

MA 02481

C IRS Center where partnership filed return

OGDEN, UT 84201-0011

D Check if this is a publicly traded partnership (PTP)

E Tax shelter registration number, if any

F Check if Form 8271 is attached

G Partner's identifying number

013-56-0797

H Partner's name, address, city, state, and ZIP code

GARY FINEBERG

57 BROADLAWN PARK #15A
CHESTNUT HILL

MA 02167

I General partner or LLC
member-managerLimited partner or other LLC
member

J Domestic partner

Foreign partner

K What type of entity is this partner? INDIVIDUAL

L Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	2.500000 %	2.500000 %
Loss	2.500000 %	2.500000 %
Capital	2.500000 %	2.500000 %

M Partner's share of liabilities at year end:

Nonrecourse	\$
Qualified nonrecourse financing	\$
Recourse	\$ 1,008,091

N Partner's capital account analysis:

Beginning capital account	\$ -358,039
Capital contributed during the year	\$
Current year increase (decrease)	\$ 2,446
Withdrawals & distributions	\$
Ending capital account	\$ -355,593

☒ Tax basis ☐ GAAP ☐ Section 704(b) book
Other (explain)

1 Ordinary business income (loss)	15 Credits & credit recapture
2 Net rental real estate income (loss) * -122	
3 Other net rental income (loss)	16 Foreign transactions
4 Guaranteed payments	
5 Interest income 1,483	
6a Ordinary dividends 56	
6b Qualified dividends	
7 Royalties	
8 Net short-term capital gain (loss)	
9a Net long-term capital gain (loss) 99	17 Alternative minimum tax (AMT) items
9b Collectibles (28%) gain (loss)	
9c Unrecaptured section 1250 gain	
10 Net section 1231 gain (loss)	18 Tax-exempt income and nondeductible expenses
11 Other income (loss)	B* 1,581
	C* 652
12 Section 179 deduction	19 Distributions
13 Other deductions	20 Other information
	A 1,539
14 Self-employment earnings (loss)	
* See attached statement for additional information.	

FOR IRS USE ONLY



PARTNER# 4
Schedule K-1
Form 1065

2004

Department of the Treasury
Internal Revenue ServiceTax year beginning 1/01/2004
and ending 12/31/2004☐ Final K-1☐ Amended K-1

OMB No. 1545-0049

Partner's Share of Income, Deductions,
Credits, etc. ▶ See back of form and separate instructions.

A Partnership's employer identification number
04-2973514

B Partnership's name, address, city, state, and ZIP code
ROYALL ASSOCIATES REALTY TRUST

ONE WASHINGTON ST
WELLESLEY MA 02481

C IRS Center where partnership filed return
OGDEN, UT 84201-0011

D ☐ Check if this is a publicly traded partnership (PTP)

E ☐ Tax shelter registration number, if any

F ☐ Check if Form 5271 is attached

G Partner's identifying number
013-56-2269

H Partner's name, address, city, state, and ZIP code
MICHELLE FINEBERG

1272 BEACON ST., UNIT 3
BROOKLINE MA 02446

I ☒ General partner or LLC member-manager ☐ Limited partner or other LLC member

J ☒ Domestic partner ☐ Foreign partner

K What type of entity is this partner? INDIVIDUAL

L Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	2.500000 %	2.500000 %
Loss	2.500000 %	2.500000 %
Capital	2.500000 %	2.500000 %

M Partner's share of liabilities at year end:

Nonrecourse	\$	
Qualified nonrecourse financing	\$	
Recourse	\$	<u>1,008,090</u>

N Partner's capital account analysis:

Beginning capital account	\$	<u>-77,269</u>
Capital contributed during the year	\$	
Current year increase (decrease)	\$	<u>2,446</u>
Withdrawals & distributions	\$	<u>()</u>
Ending capital account	\$	<u>-74,823</u>

☒ Tax basis ☐ GAAP ☐ Section 704(b) book
Other (explain)

1 Ordinary business income (loss)	16 Credits & credit recapture
2 Net rental real estate income (loss)	
* <u>-122</u>	
3 Other net rental income (loss)	16 Foreign transactions
4 Guaranteed payments	
5 Interest income	
<u>1,483</u>	
6a Ordinary dividends	
<u>56</u>	
6b Qualified dividends	
7 Royalties	
8 Net short-term capital gain (loss)	
9a Net long-term capital gain (loss)	17 Alternative minimum tax (AMT) items
<u>99</u>	
9b Collectibles (28%) gain (loss)	
9c Unrecaptured section 1250 gain	
10 Net section 1231 gain (loss)	18 Tax-exempt income and nondeductible expenses
11 Other income (loss)	B* <u>1,581</u>
	C* <u>651</u>
12 Section 179 deduction	19 Distributions
13 Other deductions	
14 Self-employment earnings (loss)	20 Other information
	A <u>1,539</u>
See attached statement for additional information.	

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EBLUE HILL
5542

PARTNER# 5
Schedule K-1
Form 1065

Partners of the Treasury
Internal Revenue Service

2004

Tax year beginning 1/01/2004
and ending 12/31/2004

☐ Final K-1

☐ Amended K-1

OMB No. 1545-0099

Partner's Share of Income, Deductions,
Credits, etc. See back of form and separate instructions.

A Partnership's employer identification number

04-2973514

B Partnership's name, address, city, state, and ZIP code

ROYALL ASSOCIATES REALTY TRUST

ONE WASHINGTON ST
WELLESLEY

MA 02481

C IRS Center where partnership filed return

OGDEN, UT 84201-0011

D ☐ Check if this is a publicly traded partnership (PTP)

E ☐ Tax shelter registration number, if any

F ☐ Check if Form 8271 is attached

G Partner's identifying number

031-30-6463

H Partner's name, address, city, state, and ZIP code

WILLIAM J. LANGELIER

2045 JACKSON ST.
SAN FRANCISCO

CA 94109

☒ General partner or LLC
member-manager

☐ Limited partner or other LLC
member

☒ Domestic partner

☐ Foreign partner

I What type of entity is this partner? INDIVIDUAL

J Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	48.750000 %	48.750000 %
Loss	48.750000 %	48.750000 %
Capital	48.750000 %	48.750000 %

K Partner's share of liabilities at year end:

Nonrecourse \$
Qualified nonrecourse financing \$
Recourse \$ 19,657,765

L Partner's capital account analysis:

Beginning capital account \$ -6,246,188
Capital contributed during the year \$
Current year increase (decrease) \$ 47,700
Withdrawals & distributions \$
Ending capital account \$ -6,198,488

☒ Tax basis ☐ GAAP ☐ Section 704(b) book
Other (explain)

1 Ordinary business income (loss)	15 Credits & credit recapture
2 Net rental real estate income (loss)	
* <u>153,555</u>	
3 Other net rental income (loss)	16 Foreign transactions
4 Guaranteed payments	
5 Interest income	
<u>28,920</u>	
6a Ordinary dividends	
<u>1,092</u>	
6b Qualified dividends	
7 Royalties	
8 Net short-term capital gain (loss)	
9a Net long-term capital gain (loss)	17 Alternative minimum tax (AMT) items
<u>1,929</u>	
9b Collectibles (28%) gain (loss)	
9c Unrecaptured section 1250 gain	
10 Net section 1231 gain (loss)	18 Tax-exempt income and nondeductible expenses
11 Other income (loss)	B* <u>30,837</u>
	C* <u>STMT</u>
12 Section 179 deduction	19 Distributions
13 Other deductions	20 Other information
	A <u>30,012</u>
14 Self-employment earnings (loss)	
* See attached statement for additional information.	

FOR IRS USE ONLY

Privacy Act and Paperwork Reduction Act Notice, see Instructions for Form 1065.

Schedule K-1 (Form 1065) 2004

BLUE HILL
5543

PARTNER# 6
Schedule K-1
Form 1065

2004

Department of the Treasury
Internal Revenue ServiceTax year beginning 1/01/2004
and ending 12/31/2004Partner's Share of Income, Deductions,
Credits, etc. See back of form and separate instructions.

A Partnership's employer identification number
04-2973514

B Partnership's name, address, city, state, and ZIP code
ROYALL ASSOCIATES REALTY TRUST
ONE WASHINGTON ST
WELLESLEY MA 02481

C IRS Center where partnership filed return
OGDEN, UT 84201-0011

D ☐ Check if this is a publicly traded partnership (PTP)

E ☐ Tax shelter registration number, if any

F ☐ Check if Form 8271 is attached

G Partner's identifying number
043-38-8547

H Partner's name, address, city, state, and ZIP code
AMY BADGER
21 OLIVE STREET
NEWBURYPORT MA 01950

I ☒ General partner or LLC member-manager ☐ Limited partner or other LLC member

J ☒ Domestic partner ☐ Foreign partner

K What type of entity is this partner? **INDIVIDUAL**

L Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	1,250,000 %	1,250,000 %
Loss	1,250,000 %	1,250,000 %
Capital	1,250,000 %	1,250,000 %

M Partner's share of liabilities at year end:

Nonrecourse	\$
Qualified nonrecourse financing	\$
Recourse	\$ 504,045

N Partner's capital account analysis:

Beginning capital account	\$ -596,498
Capital contributed during the year	\$
Current year increase (decrease)	\$ 1,223
Withdrawals & distributions	\$ ()
Ending capital account	\$ -595,275

☒ Tax basis ☐ GAAP ☐ Section 704(b) book
☐ Other (explain)

1 Ordinary business income (loss)	15 Credits & credit recapture
2 Net rental (real estate) income (loss) * -61	
3 Other net rental income (loss)	16 Foreign transactions
4 Guaranteed payments	
5 Interest income 742	
6a Ordinary dividends 28	
6b Qualified dividends	
7 Royalties	
8 Net short-term capital gain (loss)	
9a Net long-term capital gain (loss) 49	17 Alternative minimum tax (AMT) items
9b Collectibles (28%) gain (loss)	
9c Unrecaptured section 1250 gain	
10 Net section 1231 gain (loss)	18 Tax-exempt income and nondeductible expenses
11 Other income (loss)	B* 791
	C* 326
12 Section 179 deduction	19 Distributions
13 Other deductions	20 Other information
	A 770
14 Self-employment earnings (loss)	
* See attached statement for additional information.	

FOR USE ONLY

Privacy Act and Paperwork Reduction Act Notice, see Instructions for Form 1065.

Schedule K-1 (Form 1065) 2004

BLUE HILL
5544

04-2973514

FYE: 12/31/2004

Federal Statements**Statement 1 - Form 1085, Schedule K, Line 18b - Other Tax-exempt Income**

Description	Amount
TAX EXEMPT INTEREST	\$ 63,256
TOTAL	\$ 63,256

Statement 2 - Form 1085, Schedule K, Line 18c - Nondeductible Expenses

Description	Amount
DECREASE IN MARKET VALUE	\$ 26,066
DEPRECIATION ADJUSTMENT	155,926
TOTAL	\$ 181,992

04-2973514

Federal Statements

FYE: 12/31/2004

Statement 3 - Form 1065, Schedule L, Line 6 - Other Current Assets

Description	Beginning of Year	End of Year
IMPROVEMENTS/OPERATIONS- RESER	\$ 1,592,812	\$ 254,385
ESCROWED ACCOUNTS	3,744,294	4,206,518
TOTAL	\$ 5,337,106	\$ 4,460,903

Statement 4 - Form 1065, Sch M-1, Ln 4 - Expenses Recorded on Books, Not on Sch K

Description	Amount
DECREASE IN MARKET VALUE	\$ 26,066
DEPRECIATION ADJUSTMENT	153,926
TOTAL	\$ 181,992

Statement 5 - Form 1065, Sch M-1, Ln 6 - Income Recorded on Books, Not on Sch K

Description	Amount
TAX EXEMPT INTEREST	\$ 63,256
TOTAL	\$ 63,256

Statement 6 - Schedule M-1, Line 7 - Deductions Included in Sch K, Not on Books

Description	Amount
ROUNDING ADJUSTMENT	\$ 1
TOTAL	\$ 1

04-2973514

Federal Statements

FYE: 12/31/2004

Statement 7 - 150 ROYALL STREET - Form 8825 - Other Expense

<u>Description</u>	<u>Amount</u>
MANAGEMENT FEES	\$ 130,352
HEALTH CLUB	719
TELEPHONE	1,478
MAINTENANCE LABOR	169,451
MISCELLANEOUS	600
TRASH REMOVAL	20,353
MATERIALS	24,955
AUTO LEASING	4,063
EXTERMINATING	475
AMORTIZATION	17,068
TOTAL	\$ <u>369,514</u>

EXHIBIT 24

Apr 1, 2005 Friday
2:57 P.M.

UPDATE
XG073-02 Notes Maintenance

Account number 760990083 BLUE HILLS OF Note date 10/24/2001
ote type. TX TAX
Reference number TAX SHORTAGE

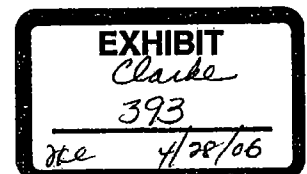
Note Text

\$98,587.19 (delbert stone will either wire in 10/25, or ov
ernight a check.

10/0 mr stone sent in \$142,997.11 for tax escrow so he would
have additional funds in the acct. it was deposited to the
reserve. doing tran 40 this date to transfer to tax escrow.

F1=Rtn/Nc

F12=Edit Enter=Process Roll keys



WF01693

UPDATE
XG073-02 Notes Maintenance Apr 1, 2005 Friday 2:57 P.M.

Account number 760990083 BLUE HILLS OF Note date 1/24/2002
Note type. TX TAX
Reference number TAX SHORTAGE

Note Text

Borrower wired funds 1/18 and intended them for tax escrow a
ccount. wire went to lockbox reserve. Borrower will fax le
tter to authorize transfer to tax escrows.

F1=Rtn/Nc

F12=Edit Enter=Process Roll keys

WF01696

XG073-02 UPDATE

Notes Maintenance

Apr 1, 2005 Friday
2:57 P.M.

Account number 760990083 BLUE HILLS OF Note date 4/22/2002
 Note type. TX TAX
 Reference number TAX PMT DUE 5/1

Note Text

gil stone called (781)239-1480 regarding tax next due 5/1/02. i told him according to our note pads, the installment was already paid. he states he did not pay the last installment. i called the assessor again and they show only 1 check being received. ck #1224. this is not a manual check. we paid with check # 16065. he is faxing his tax bill & a letter granting permission to take money from one of his accts for the tax shortage.

F1=Rtn/Nc

F12=Edit Enter=Process Roll keys

WF01702

UPDATE		Notes Maintenance		Apr 1, 2005 Friday
XG073-02				2:57 P.M.

Account number	760990083	BLUE HILLS OF	Note date	4/24/2002
ote type.			TX	TAX
Reference number		TRANSFER FUNDS		

Note Text

received permission from borrower & m gremore to transfer
\$101,179.20 from lock box sweep to tax escrow for shortage
of may 1, 2002 installment.

F1=Rtn/Nc	F12=Edit	Enter=Process	Roll keys
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WF01703

UPDATE
XG073-02 Notes Maintenance Apr 1, 2005 Friday
2:58 P.M.

Account number 760990083 BLUE HILLS OF Note date 7/25/2002
ote type. TX TAX
Reference number TRANSFERED FUND

Note Text

Received a wire from the borrower for the shortage in the
amount of \$580,082.52 but it was applied to the reserves
account. We have debited the reserves account and moved the
money into the tax reserve account.

F1=Rtn/Nc

F12=Edit Enter=Process Roll keys

WF01712

Apr 1, 2005 Friday
2:58 P.M.

UPDATE
XG073-02 Notes Maintenance

Account number 760990083 BLUE HILLS OF Note date 10/21/2002
Note type. TR TRANSACTION NOTES
reference number 2002100016

Note Text

~~FUNDS ORIGINALLY APPLIED TO RESERVE 004 IS INCORRECT. FUNDS
ARE FOR A TAX SHORTAGE AND THEY SHOULD HAVE BEEN APPLIED TO
THE TAX ESCROW.~~

F1=Rtn/Nc

F12=Edit Enter=Process Roll keys

WF01717

UPDATE
XG073-02 Notes Maintenance Apr 1, 2005 Friday 2:59 P.M.

Account number 760990083 BLUE HILLS OF Note date 7/25/2003
Note type. TR TRANSACTION NOTES
Reference number 2003070015

Note Text

I have moved the funds from the reserve bucket 4 to credit
the tax escrow since this wire was for the tax shortage
in the amount of \$154,752.47.

F1=Rtn/Nc

F12=Edit Enter=Process Roll keys

WF01733

Apr 1, 2005 Friday
3:00 P.M.

UPDATE
XG073-02 Notes Maintenance

Account number 760990083 BLUE HILLS OF Note date 4/28/2004
ote type. TR TRANSACTION NOTES
Reference number 2004040006

Note Text

Funds were rec'd on 4/23/04 & deposited into acct# 640425957
4 due to Loan being Cash Mgmt loan. Funds are for Tax short
age. Borrower didn't reference "Tax shortage" on wire.

Debited funds from Acct# 6404259574 & applied to Tax escrow
with a back date of 4/23/04 (date funds were rec'd).

F1=Rtn/Nc

F12=Edit Enter=Process Roll keys

WF01739

Apr 1, 2005 Friday
2:57 P.M.

UPDATE
XG073-02 Notes Maintenance

Account number 760990083 BLUE HILLS OF Note date 5/08/2002
Note type. IS INS
Reference number

Note Text

Gil Stone (781) 431 1108 will request that we transfer
insurance shortage of \$1251.24 from his lockbox excess
to his insurance account. He will fax letter to
Donna Loo's attention.

F1=Rtn/Nc

F12=Edit Enter=Process Roll keys

WF01704

UPDATE

Apr 1, 2005 Friday

3:01 P.M.

XG073-02

Notes Maintenance

Account number 760990083 BLUE HILLS OF Note date 7/29/2004
 *Note type. TX TAX
 Reference number NO TAX DSBRSMT

Note Text

I have contacted Gil Stern phone #1-781-239-1480 and notified him that per his loan agreement the only way we could move money from his reserve account to his tax account is if he provides a certification letters, copy of lease, or leases, and copy of invoice/Lien Waiver. Gil advised that he did not have a lien waiver. I have contacted Jill Martin and she referenced that without the Lien Waiver, Gil will not be able to move money from reserves to the tax escrow bucket. Escalating this matter to Deborah Lambson.

$$F1 = Rtn / Nc$$

F12=Edit Enter=Process Roll keys

WF01745

Apr 1, 2005 Friday
3:01 P.M.

XG073-02 UPDATE Notes Maintenance

Account number 760990083 . BLUE HILLS OF Note date 7/29/2004
Note type. TX TAX
Reference number NON COMPLIANCE

Note Text

I have called and talked with Gil Stern with regards to the tax shortage that was billed 7/16/04 and due 7/27/04. Taxes are due to the Town of Canton by 8/2/04. Gil stated that their tenant moved out and there are no available funds to pay taxes. We contacted Reserve Dept per borrower request to find out if Reserve money could be moved to tax escrow. Borrower unable to comply with requirements for transferring reserve money to tax escrow. Advancing funds today per Ops Manager approval. Escalating to Asset Manager.

F1=Rtn/Nc

F12=Edit Enter=Process Roll keys

WF01746

UPDATE
XG073-02 Notes Maintenance Apr 1, 2005 Friday
3:01 P.M.

Account number 760990083 BLUE HILLS OF Note date 8/12/2004
Note type. TR TRANSACTION NOTES
Reference number 2004080006

Note Text

borrower is going to special servicer reversed the payment
autodebit should have been stoped
He is in contact with curt Mallegni for possible transfer

F1=Rtn/Nc

F12=Edit Enter=Process Roll keys

WF01747

UPDATE
XG073-02 Notes Maintenance Apr 1, 2005 Friday
3:01 P.M.

Account number 760990083 BLUE HILLS OF Note date 8/20/2004
Note type. TR TRANSACTION NOTES
Reference number 2004080011

Note Text

Hold code(s) S override by SHUHEIR
Funds in the amount of \$ 51,908.89 has been placed into the
suspense account. Email sent to the Special Servicer on how
to apply the funds.

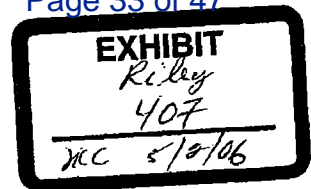
F1=Rtn/Nc

F12=Edit Enter=Process Roll keys

WF01752

EXHIBIT 25

EXHIBIT B



**LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF
BLUE HILLS OFFICE PARK LLC**

RECITALS

The undersigned member of Blue Hills Office Park LLC, a Delaware limited liability company (the "Company"), hereby adopts the following Limited Liability Company Operating Agreement (the "Operating Agreement"). Terms not defined in this paragraph shall have the meanings set forth in Article XIII hereof.

ARTICLE I

Formation; Members; Organization

Section 1.1. Formation.

(a) Blue Hills Management Corp., as an authorized person within the meaning of the Act, is hereby authorized to execute, deliver and file any and all amendments to and restatements of the Company's Certificate of Formation.

(b) The Members hereby agree that the rights, duties and liabilities of the Members shall be as provided in the Act, except as otherwise provided herein.

(c) The name of the Company shall be Blue Hills Office Park LLC. The business of the Company may be conducted upon compliance with all applicable laws under any name jointly designated by a Supermajority Interest.

(d) The principal place of business of the Company shall be at c/o Fineberg Management, Inc., One Washington Street, Wellesley, Massachusetts 02481. The Company may locate its places of business at any other place or places as a Supermajority Interest may deem advisable.

(e) The Company's registered office in the State of Delaware shall be at the office of its registered agent at c/o National Registered Agents, Inc., 9 East Lookerman, Dover, Kent County, Delaware 19901, and the Company's registered agent in the State of Delaware shall be National Registered Agents, Inc. At any time, a Supermajority Interest may change the registered office and registered agent of the Company by directing Blue Hills Management Corp., as an authorized person under the Act, to file the address of the new registered office and/or the name of the new registered agent with the Secretary of State of the State of Delaware pursuant to the Act.

(f) The Company shall have perpetual existence unless the Company is earlier dissolved in accordance with the provisions of this Operating Agreement.

Section 1.2. Organization and Powers. The Members or the Manager, if a Manager has been retained pursuant to the terms of this Operating Agreement or otherwise, shall file such certificates and documents as appropriate to comply with the applicable requirements for the operation of a

Blue Hill
1969

limited liability company in accordance with the laws of the State of Delaware and any other jurisdiction in which the Company elects to do business. Subject to all other provisions of this Operating Agreement, the Company is hereby authorized and empowered:

(a) to acquire any property, real or personal, in fee or under lease, or any rights therein or appurtenant thereto, necessary or convenient for the business and operations of the Company;

(b) to borrow money and to issue evidences of indebtedness and to secure the same by mortgage, pledge or other lien on its assets;

(c) to pay and prepay in whole or in part, finance and refinance, decrease, increase, modify or extend any indebtedness, whether secured or unsecured, and in connection therewith to execute and deliver any and all loan evidencing, governing and security documents, together with extensions, renewals, or modifications of any such indebtedness, documents and/or instruments, or the mortgages or liens securing the same;

(d) to employ a management company to manage its assets (including a company which may be an Affiliate);

(e) to construct, operate, maintain, finance and improve, and to own, sell, convey, assign, mortgage or lease any real estate and any personal property necessary, convenient or incidental to accomplish the purposes of the Company; and

(f) to carry on any other activities necessary to, or in connection with, or incidental to, the accomplishment of the purposes of the Company, so long as such activities are not prohibited to be carried on or performed by a limited liability company under the laws of the State of Delaware.

Section 1.2. Annual Meeting. The annual meeting of the Voting Members of the Company shall be held on the first Tuesday in February of each year or on such other date designated by a Supermajority Interest. The purposes of such meeting shall be to review the performance of the leasing and management agents or agents for the Company's properties, to review the operations of the Company for the prior calendar year, and to consider such other business as may come before the meeting. If the date fixed for the annual meeting is a legal holiday in the State of Delaware, the meeting shall be held on the next succeeding business day.

Section 1.3. Regular Meetings. Regular meetings of the Voting Members of the Company may be held at such times as may be scheduled by Voting Members holding a Supermajority Interest.

Section 1.4. Special Meetings. Special meetings of the Voting Members of the Company shall only be held when called by all of the Voting Members.

Section 1.5. Place. Meetings of the Voting Members of the Company may be held within or without the State of Delaware at such place designated by the persons calling the meeting, unless a Supermajority Interest shall designate another place of meeting. If no place of meeting has been so designated, the meeting shall be held at the Company's registered office.

Section 1.6. Notice of Special Meetings. Written notice stating the place, date and time of a special meeting, and the purposes for which the meeting has been called, shall be delivered to each Voting Member not less than five (5) nor more than sixty (60) days before the date set for the meeting, by or at the direction of the persons calling the meeting. Notice may be given by: (a) mail, (b) nationally recognized overnight delivery service such as Federal Express, or (c) hand delivery, courier, facsimile transmission, or other form of electronic communication, if a receipt of such delivery, transmission or communication is retained by the sender. Such notice shall be deemed to have been given: (i) if mailed, three (3) days after deposit thereof in the United States mail addressed to the Voting Member at its address as it appears on the books of the Company, with postage thereon prepaid, and (ii) if given by any of the other means authorized above, on the date sent as evidenced by the record of delivery or receipt, as applicable.

Section 1.7. Notice of Adjourned Meetings. When a meeting has been adjourned to another time and place, it shall not be necessary to give any notice of the adjourned meeting if the date, time and place to which the meeting has been adjourned are announced at the meeting at which the adjournment is taken.

Section 1.8. Waiver of Notice. Whenever any notice is required to be given to any Voting Member, a waiver thereof in writing signed by the Voting Member entitled to such notice, whether made before or after the time for notice to be given, is equivalent to the giving of notice. Attendance in person at a meeting shall constitute a waiver of notice of such meeting, except when the Voting Member attends for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting has not been properly called or convened pursuant to this Operating Agreement. Attendance of a Voting Member at a meeting also constitutes a waiver of any objection to the transaction of a particular type of business at the meeting that is not within the described purposes of the meeting, unless such Voting Member objects to the consideration of the item of business when it is presented. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Voting Members need be specified in any written waiver of notice.

Section 1.9. Quorum and Voting. A Supermajority Interest of the Voting Members of the Company present in person or by proxy shall constitute a quorum at a meeting of Voting Members. Once a Voting Member is present at a meeting, the Voting Member shall be deemed present for quorum purposes for the remainder of the meeting.

If a quorum of Voting Members is present, each matter requiring the approval of the Voting Members shall require the approval of a Supermajority Interest of Voting Members present in person or by proxy, unless otherwise provided by law, the Certificate of Formation or this Operating Agreement.

Section 1.10. Voting of Interests. A Voting Member that is a corporation may vote by the officer, agent or proxy designated by the by-laws of the Voting Member; or, in the absence of any applicable by-law, by such person as the board of directors of the Voting Member may designate. Proof of such designation may be made by presentation of a certified copy of the by-laws, corporate vote or other instrument of the Voting Member. In the absence of any such designation, or in case of a conflicting designation by the Voting Member, the chairman of the board, president, any vice

president (in order of rank or seniority), secretary and treasurer of the Voting Member shall be presumed to possess, in that order, authority to vote on behalf of such Voting Member.

A Voting Member that is a partnership may vote by any general partner thereof or any person designated in writing by all of the general partners. Proof of a general partner's status may be established by presentation to the other Voting Members of a certified copy of the partnership agreement therefor and any certificates as to factual matters reasonably required by the other Voting Members.

A Voting Member that is any form of entity other than a corporation or partnership may vote in any manner authorized by a Supermajority Interest.

Section 1.11. Action by Members Without a Meeting. Any action required or permitted to be taken at any annual, regular or special meeting of Voting Members of the Company may be taken without a meeting and without prior notice, if consents in writing, setting forth the action so taken, shall be signed by Voting Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Voting Members were present and voted. In order to be effective, the written consents must be dated and signed by each consenting Voting Member and shall be effective as of the date when the last Voting Member necessary to make such written consent effective under the terms of the preceding sentence has signed such written consent.

Within ten (10) days after obtaining such authorization by written consent, written notice fairly summarizing the material features of the action taken by the written consent shall be given to those Voting Members who have not consented in writing; provided, however, that failure to give such notice to any of such Voting Members shall not invalidate or otherwise adversely affect the action taken by the written consent.

Section 1.12. Telephone Conference and Electronic Media. To the extent not prohibited or restricted by law or the Certificate of Formation, any meeting of the Voting Members may be conducted through the use of any means of communication by which all Voting Members participating may simultaneously hear each other during the meeting. A Voting Member participating in a meeting by this means is deemed to be present in person at the meeting.

Section 1.13. Proxy Voting. At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Company before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. A proxy may only be given verbally during a meeting taking place by teleconferencing and shall expire at the termination of said teleconference.

ARTICLE II

Ownership Interests

Upon its execution of this Operating Agreement, without the need for the consent or other action of any person or the need for any other agreement, Royall Associates Realty Trust, a Massachusetts trust, under a Declaration of Trust dated July 13, 1987 and recorded with the Norfolk County Registry of Deeds in Book 7658, Page 682, as the same may be amended of record to date, shall be admitted as the only Member of the Company, having contributed an undivided one hundred (100%) percent interest in the Property to the capital of the Company. Royall Associates Realty Trust shall own one hundred (100%) percent of the Percentage Interests in the Company.

This Article II shall be updated from time to time as is necessary to reflect accurately the information contained therein, including, without limitation, the admission of additional Members to the Company. Any revision to this Article II made in accordance with this Operating Agreement shall not be deemed an amendment to this Operating Agreement. Any reference in this Operating Agreement to this Article II shall be deemed to be a reference to this Article II as amended and in effect from time to time.

No Member shall be required to contribute or lend to the Company any additional amounts. If funds are needed, a Member may, but shall not be required to, contribute or lend monies to the Company. If a Member lends monies to the Company, those loans shall be repayable on demand, bear interest at an annual rate requested by the lending Member, such rate not to exceed eighteen (18%) percent per annum, and any and all such loans and interest thereon shall be repaid prior to any distributions to the Members.

No Member or Transferee shall have the right to receive property other than cash in return for its Capital Contributions unless a Supermajority Interest otherwise agrees in writing. No interest will be paid on Capital Contributions. No Member will be responsible or liable for the return of any Capital Contribution to any other Member.

The provisions of this Article II are not intended to be for the benefit of any creditor to whom any debts, liabilities or obligations are owed by the Company or any of its Members. No creditor shall obtain any rights under this Operating Agreement or shall by reason of this Operating Agreement have any right to make any claim with respect to any debt, liability or obligation against the Company.

ARTICLE III

Capital Accounts; Allocations of Net Profits and Net Losses

Section 3.1. Capital Accounts.

(a) An individual Capital Account shall be established and maintained for each Member. The original Capital Account established for any Member who acquires an interest in the Company by virtue of an assignment in accordance with the terms of this Operating Agreement shall be in the

same amount as, and shall replace, the Capital Account of the assignor of such interest and, for purposes of this Operating Agreement, such Member shall be deemed to have made the Capital Contributions made by the assignor of such interest (or made by such assignor's predecessor in interest). To the extent such Member acquires less than the entire interest in the Company of the assignor of the interest so acquired by such Member, the original Capital Account of such Member and its Capital Contributions shall be in proportion to the interest it acquires, and the Capital Account of the assignor who retains a partial interest in the Company, and the amount of its Capital Contributions, shall be reduced in proportion to the interest he or it retains.

(b) The Capital Account of each Member shall be maintained in accordance with the following provisions:

- (i) to such Member's Capital Account there shall be credited such Member's Capital Contributions, such Member's distributive share of Net Profits and the amount of any Company liabilities that are assumed by such Member or that are secured by any Company assets that are distributed to such Member;
- (ii) to such Member's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any other Company assets that are distributed to such Member pursuant to any provision of this Operating Agreement, such Member's distributive share of Net Losses and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company; and
- (iii) in determining the amount of any liability for purposes of this subsection (b), there shall be taken into account Section 752(c) of the Code and any other applicable provisions of the Code and the treasury regulations promulgated thereunder.

(c) No Member shall ever have any obligation to contribute funds in order to restore his or its negative Capital Account.

Section 3.2. Withdrawal or Reduction of Members' Contributions to Capital.

(a) A Member shall not receive from the property of the Company any part of its Capital Contribution until all liabilities of the Company have been satisfied (whether by payment or reasonable provision for payment thereof).

(b) A Member, irrespective of the nature of its Capital Contributions, has only the right to demand and receive cash in return for such Capital Contributions.

Section 3.3. Net Profits and Net Losses.

(a) Subject to the allocation rules of Section 3.4, Net Profits shall be allocated among the Members in proportion to such Members' Percentage Interests.

(b) Subject to the allocation rules of Section 3.4, Net Losses shall be allocated among the Members in proportion to such Members' Percentage Interests.

Section 3.4. Allocation Rules.

(a) In the event Members are admitted pursuant to this Operating Agreement on different dates, the Net Profits (or Net Losses) allocated to the Members for each year during which such Members are so admitted shall be allocated among the Members in proportion to the Percentage Interest each such Member holds from time to time during such year in accordance with Section 706 of the Code, using any convention permitted by law and selected by the Manager.

(b) For purposes of determining the Net Profits, Net Losses or any other items allocable to any period, Net Profits, Net Losses and any such other items shall be determined on a daily, monthly, quarterly or other basis, as determined by the Manager using any method that is permissible under Section 706 of the Code and the treasury regulations promulgated thereunder.

(c) Except as otherwise provided in this Operating Agreement, all items of Company income, gain, loss, deduction and any other allocations not otherwise provided for herein shall be divided among the Members in the same proportions as they share Net Profits and Net Losses.

(d) The Members are aware of the income tax consequences of the allocations made by this Article III and hereby agree to be bound by the provisions of this Article III in reporting their shares of Company income and loss for income tax purposes.

Section 3.5. Tax Allocations: Section 704(c) of the Code.

(a) In accordance with Section 704(c) of the Code and the treasury regulations promulgated thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value.

(b) In the event the Gross Asset Value of any Company asset is adjusted pursuant to Paragraph (b) of the definition of "Gross Asset Value" contained in Article XIII hereof, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Section 704(c) of the Code and the treasury regulations promulgated thereunder.

(c) Any elections or other decisions relating to allocations under this Section 3.5, including the selection of any allocation method permitted under treasury regulation Section 1.704-3, shall be made by the Manager in any manner that reasonably reflects the purpose and intention of this Operating Agreement. Allocations pursuant to this Section 3.5 are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Profits, Net Losses, other items or distributions pursuant to any provision of this Operating Agreement.

Section 3.6. Curative Allocations.

(a) The provisions of this Agreement relating to the maintenance of Capital Accounts, the allocation of Net Profits or Net Losses and the distribution of Distributable Cash to the Members are intended to comply with the requirements of the Allocation Regulations by causing the amount of such Net Profits or Net Losses to be allocated to and among the Capital Accounts of the Members so that the Capital Accounts of each Member as of the end of each fiscal year of the Company is equal to the Hypothetical Liquidation Amount distributable to such Partner minus such Member's Share of Company Minimum Gain and Share of Member Minimum Gain, if any. In addition, such provisions are intended to cause the amount distributable to the Members in an actual distribution pursuant to Article VIII to equal the amount that would be distributable to each Member if Article III and/or Article V rather than Article VIII applied to such distribution.

(b) If the Company is advised at any time by its accountants or by tax counsel that the allocations of Net Profits or Net Losses for any fiscal year of the Company are unlikely to be respected for tax purposes or that an actual distribution to the Members at the end of such fiscal year computed in accordance with Article VIII would not result in each Member receiving the amount that he would have received if Article III and/or Article V rather than Article VIII applied to such hypothetical distribution, the Manager is authorized and empowered, without the Approval of the Members, to amend the provisions of this Agreement relating to the allocation of Net Profits or Net Losses (other than the Regulatory Allocations) for such fiscal year (and for subsequent fiscal years if necessary) to cure such defect consistent with the principles of Section 3.6(a) above.

Section 3.7. Operating Distributions. The Company shall at least once annually distribute Distributable Cash, if Distributable Cash is available, to Members in accordance with their Percentage Interests.

ARTICLE IV

Loans by Voting Member

A Voting Member may extend a loan or loans to the Company to pay operating expenses of the Company or for any other legitimate Company purpose with the approval of, and upon such terms as agreed to by those Original Voting Members (including for this purpose the Member(s) agreeing to make the loan(s) to the Company) holding a Supermajority Interest (or, if there are then no Original Voting Members then holding a Supermajority Interest), or as otherwise permitted in Article II hereof. The determination of what constitute a legitimate Company purpose shall be made by the Manager in its sole discretion.

ARTICLE V

Rights and Obligations of Members

Section 5.1. Limitation of Liability. Except as otherwise provided in this Operating Agreement or the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and

no Member shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member.

Section 5.2. List of Members. Upon the written request of any Member for any purpose reasonably related to such Member's interest in the Company, the Manager shall provide to such Member a list showing the names, addresses and Membership interests of all Members.

Section 5.3. Company Books. The Manager shall maintain and preserve the accounts, books and other relevant Company documents. Upon reasonable written request, each Member shall have the right, at a time during ordinary business hours, as reasonably determined by the Manager, to inspect and copy, at the requesting Member's expense, the books and records of the Company for any purpose reasonably related to such Member's interest.

Section 5.4. Priority and Return of Capital. No Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions; provided that this Section 5.4 shall not apply to loans made to the Company by a Member.

Section 5.5. Liability of a Member to the Company. A Member who receives a distribution from the Company is liable to the Company or to others only to the extent provided by the Act and other applicable law.

ARTICLE VI

Transfers of Interests

Section 1. Transfers. Notwithstanding anything to the contrary contained herein, no Member shall be permitted to transfer his, her or its interest in the Company without the prior written consent of a Supermajority Interest of the Original Voting Members, which may be withheld in their sole discretion. A Transferee shall not become a Member or Voting Member unless the Original Voting Members holding a Supermajority Interest agree in writing to the admission of the Transferee as a Member or Voting Member, as the case may be. If there are then no Original Voting Members, either of the foregoing may be accomplished by the prior written consent of the Voting Members then holding a Supermajority Interest.

A Transferee that does not become a Voting Member shall have no right to vote on any matter upon which Voting Members may vote, and shall only have the right to profits, losses, capital and distributions allocated upon to the transferred interest.

Any person or entity succeeding to the interest of a Member pursuant to the terms of this Article VI (a "Substitute Member"), whether as an Assignee or Transferee, shall assume and be subject to all of the applicable obligations of the transferring or assigning Member set forth in this Operating Agreement, including, without limitation, the provisions of Article IV hereof. In the event such Substitute Member shall fail to abide by the terms of this Operating Agreement, the transfer or Assignment of such interest to a Substitute Member, at the sole option of the Original Voting Members holding a Supermajority Interest (or, if there are then no Original Voting Members, by the

Voting Members then holding a Supermajority Interest), shall be deemed null and void and of no force or effect.

Section 2. Restrictions. In no event shall all or any part of a Member's Percentage Interest be Assigned to a minor or to an incompetent (other than to a member of a Member's Immediate Family).

The Manager may require as a condition of any Assignment of any Percentage Interest, that the assignor (i) assume all costs incurred by the Company in connection therewith, and (ii) furnish it with an opinion of counsel satisfactory to counsel to the Company that such sale, transfer, exchange or other disposition complies with applicable Federal and state securities laws and will not cause the Company to be taxed as an association.

Any Assignment in contravention of any of the provisions of this Operating Agreement shall be void and ineffectual and shall not bind, or be recognized by, the Company.

Section 3. Assignees. In the event of the death or incapacity of any Member, his legal representatives shall have such rights as are afforded them by law. The death of a Member shall not dissolve the Company.

An Assignee of a Member who does not become a Substitute Member in accordance with the provisions this Operating Agreement shall, if such Assignment is in compliance with the terms of this Operating Agreement, have the right to receive the same share of Net Profits, Net Losses and distributions of the Company to which the assigning Member would have been entitled if no such Assignment had been made by such Member.

Any Member who shall Assign all his interest in the Company shall cease to be a Member of the Company, and shall no longer have any rights or privileges or obligations of a Member except that, unless and until the Assignee of such Member is admitted to the Company as a Substitute Member in accordance with the provisions of this Operating Agreement, said assigning Member shall retain such statutory rights and be subject to all obligations of Members under this Operating Agreement and shall further be subject to such statutory obligations as may be applicable.

In the event of any Assignment of a Member's Percentage Interest, there shall be filed with the Company a duly executed and acknowledged counterpart of the instrument making such Assignment; such instrument must evidence the written acceptance of the Assignee to all the terms and provisions of this Operating Agreement; and if such an instrument is not so filed the Company need not recognize any such Assignment for any purpose.

An Assignee of a Member's interest as a Member who does not become a Substitute Member as provided in this Operating Agreement and who desires to make a further Assignment of his Percentage Interest shall be subject to the provisions of this Article VI to the same extent and in the same manner as any Member desiring to make an Assignment of his Percentage Interest.

ARTICLE VII

Admission of New Voting Members

The Company may admit a person or entity as a Voting Member only if those Original Voting Members holding a Supermajority Interest consents thereto in writing. If there are then no Original Voting Members, then the foregoing shall be effected by written consent of the Voting Members then holding a Supermajority Interest.

ARTICLE VIII

Dissolution

Section 8.1. Events of Dissolution. The Company shall be dissolved upon the occurrence of any of the following:

- (a) the sale or other disposition of all of the assets of the Company;
- (b) the unanimous written agreement of all Members to dissolve; or
- (c) upon the occurrence of any of the events described in Section 18-801(4) or (5) of the Act.

Each Member acknowledges and agrees that it shall not be permitted to resign as a Member of the Company and agrees to indemnify and hold harmless the Company and its Members from any and all loss, cost damage and expense, including reasonable attorneys' fees, sustained by the Company and/or its Members on account of any breach its agreement contained in this Article VIII. Any resignation shall not cause a dissolution of the Company.

Upon the death, retirement, resignation, Bankruptcy or dissolution of a Voting Member (except for an involuntary dissolution caused by the failure of such Voting Member to file an annual or other periodic report, if such Voting Member is reinstated within ninety (90) days after such voluntary dissolution), such Voting Member shall thereupon automatically become a Non-Voting Member.

Section 8.2. Distributions Upon Dissolution. In settling accounts after dissolution of the Company, the assets of the Company shall be applied in the following order:

- (a) To pay those liabilities to creditors, in the order of priority as provided by law, including repayment of loans made by Members to the Company and amounts due from the Company to third party creditors, but excluding repayment to Members and Transferees of their contributions of capital to the Company;
- (b) Those liabilities to Members and Transferees in respect of their contributions to capital of the Company; and

(c) To the Members in accordance with their Percentage Interests.

Section 8.3. Certificate of Cancellation. If a dissolution of the Company occurs and all debts, liabilities and obligations of the Company have been satisfied (whether by payment or reasonable provision for payment) and all of the remaining property and assets of the Company have been distributed, a certificate of cancellation as required by the Act shall be executed and filed by the Manager of the Company, as an authorized person within the meaning of the Act, with the Secretary of State of the State of Delaware.

Section 8.4. Effect of Filing Certificate of Cancellation. Upon the filing of a certificate of cancellation with the Secretary of State of the State of Delaware pursuant to Section 8.3, the existence of the Company shall cease.

ARTICLE IX

Representations, Warranties and Covenants by the Members

Each Member represents to the Company and the other Members that it is duly authorized to enter into this Operating Agreement and to perform its obligations hereunder, and it has the ability to perform its obligations hereunder and if it is not a natural person, that it has been duly organized and is validly existing under the laws of the state of its organization.

Each Member (the "Indemnitor") shall indemnify and hold the Company and the other Members (collectively, the "Indemnitees") harmless from any and all liabilities, obligations, claims, contingencies, damages, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) that any or all of the Indemnitees may suffer or incur as a result of, or relating to: (a) the breach by the Indemnitor of any of the representations, warranties, covenants or agreements made by the Indemnitor in this Operating Agreement; (b) the gross negligence or intentional misconduct of the Indemnitor; or (c) acts by the Indemnitor that exceed the Indemnitor's authority under this Operating Agreement or as granted to such Indemnitor by the requisite vote, under this Operating Agreement, of the Members.

ARTICLE X

Amendment

This Operating Agreement may be amended only upon the written consent of a Supermajority Interest, except that any provisions hereof that require the consent of all of the Voting Members may be amended only upon the written consent of all of the Voting Members.

ARTICLE XI

Rights and Duties of Members

Section 11.1. Management. The business and affairs of the Company shall be managed by a manager (the "Manager") in accordance with this Operating Agreement. Blue Hills Management

Corp. shall be the initial Manager of the Company. The Manager shall direct, manage and control the business and affairs of the Company. Except for situations in which the approval of all or a specified percentage of the Members is expressly required by this Operating Agreement or by a nonwaivable provision of the Act, the Manager shall make all decisions regarding matters relating to the Company and perform any and all other acts or activities necessary, appropriate, convenient, advisable or incidental to the management of the Company's business.

Section 11.2. Certain Powers.

- (a) The Manager shall have power and authority, on behalf of the Company to:
 - (i) acquire property from any person as the Manager may determine, whether or not such person is directly or indirectly affiliated or connected with any Member;
 - (ii) borrow money from banks, other lending institutions, any Member, or Affiliates of any Member, on such terms as the Manager deems appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Manager, or, to the extent permitted under the Act and this Operating Agreement, by agents or employees associated with the Company unless expressly authorized by the Members to contract such debt or incur such liability;
 - (iii) purchase liability and other insurance to protect the Company's property and business;
 - (iv) hold, own, operate and dispose of the Company's real and personal properties;
 - (v) invest funds of the Company in time deposits, short-term governmental obligations, commercial paper or other investments;
 - (vi) sell or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan as long as such disposition is not in violation of or a cause of a default under any other agreement to which the Company may be bound;
 - (vii) execute on behalf of the Company all instruments and documents, including, without limitation, checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, documents providing for the acquisition, mortgage or disposition of the Company's property, assignments, bills of sale, leases and any other instruments or documents necessary, appropriate or convenient, advisable or incidental to the business of the Company;
 - (viii) employ accountants, legal counsel, managing agents or other experts to perform services for the Company;
 - (ix) pay, collect, compromise, litigate, arbitrate or otherwise adjust or settle any and all other claims or demands of or against the Company or to hold such proceeds against the payment of contingent liabilities;

- (x) enter into any and all other agreements on behalf of the Company; and
- (xi) do and perform all other acts as may be necessary, appropriate, convenient, advisable or incidental to the conduct of the Company's business.

(b) The unanimous vote of all of the Members shall be required for the Company to merge or consolidate with or into, or convert into, another business entity. Unless authorized to do so by this Operating Agreement or by the Members, no attorney-in-fact, employee or other agent of the Company shall have any power or authority to bind the Company in any way, to pledge the Company's credit or to render the Company liable for any purpose. No Member shall have any power or authority to bind the Company unless such Member shall have been authorized by the Members to act as an agent of the Company.

Section 11.3. Liability for Certain Acts. The Manager and each Member shall perform its duties as a Member of the Company in good faith, in a manner it reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. Neither the Manager nor any Member shall be liable to the Company or to any other Member for any loss or damage sustained by the Company or such Member unless the loss or damage shall have been the result of fraud, deceit, gross negligence, willful misconduct or a wrongful taking by the Manager or such Member.

Section 11.4. Members Have No Exclusive Duty to Company. The Manager, any Member and all Affiliates thereof may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Company, and the Company and the Members shall have no rights by virtue of this Operating Agreement in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Company, shall not be deemed wrongful or improper. No Manager, Member or Affiliate thereof shall be obligated to present any particular investment opportunity to the Company, even if such opportunity is of a character that, if presented to the Company, could be taken by the Company, and any Manager, Member or Affiliate thereof shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment opportunity.

Section 11.5. Bank Accounts. The Manager may from time to time open bank accounts in the name of the Company, and the Manager shall be the only signatory thereon, unless Members owning a Supermajority Interest determine otherwise.

Section 11.6. Indemnity of the Members, Employees and Other Agents.

(a) To the fullest extent permitted by applicable law, the Manager, a Member, any Affiliate of the Manager or such Member, any officers, directors, shareholders, partners, members, employees, representatives or agents of the Manager or such Member, or their respective Affiliates or any employee or agent thereof (each, a "Covered Person") shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Operating Agreement, except that no Covered Person shall be entitled to be

indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of fraud, deceit, gross negligence, willful misconduct or a wrongful taking with respect to such acts or omissions; provided, however, that any indemnity under this Section 11.6 shall be provided out of and to the extent of the assets of the of the Company only, and no Covered Person shall have any personal liability on account thereof.

(b) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 11.6.

(c) The Company may purchase and maintain insurance, on behalf of Covered Persons and such other persons as the Manager shall determine, against any liability that may be asserted against or expenses that may be incurred by any such person in connection with the activities of the Company or such indemnitees, regardless of whether the Company would have the power to indemnify such person against such liability under the provisions of this Operating Agreement. The Company may enter into indemnity contracts with Covered Persons and such other persons as the Manager shall determine and adopt written procedures pursuant to which arrangements are made for the advancement of expenses and the funding of obligations under this Section 11.6 and containing such other procedures regarding indemnification are appropriate.

Section 11.7. Salaries. The salaries and other compensation of the Manager shall be fixed from time to time by an affirmative vote of Members holding a Supermajority Interest.

ARTICLE XII

Miscellaneous Provisions

Section 12.1. Binding Effect. This Operating Agreement is binding upon and inures to the benefit of the Members, and, to the extent permitted by this Operating Agreement, their respective legal representatives, successors and assigns.

Section 12.2. Remedies for Breach. The limited liability company interests of each member are unique chattels and each party to this Operating Agreement shall have the remedies that are available to it for the violation of any of the terms of this Operating Agreement, including, but not limited to, the equitable remedy of specific performance (except as otherwise provided by this Operating Agreement).

Section 12.3. Governing Law. This Operating Agreement and the rights of the parties hereunder shall be construed pursuant to the laws of the State of Delaware (without regard to conflict of law principles).

Section 12.4. Waiver of Action for Partition. Each Member irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

Section 12.5. Execution of Additional Instruments. Each Member hereby agrees to execute such other and further statements of interest and holdings, designations and other instruments necessary to comply with any laws, rules or regulations.

Section 12.6. Construction. Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

Section 12.7. Waivers. The failure of any party hereto to seek redress for default of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a default, from having the effect of an original default.

Section 12.8. Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative, and the use of any right or remedy by any party hereto shall not preclude or waive the right to use any other remedy. Said rights and remedies are given in addition to any other legal rights the parties hereto may have.

Section 12.9. Headings. The headings and subheadings in this Operating Agreement are included for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Operating Agreement or any provisions hereof.

Section 12.10. Severability. If any provision or term of this Operating Agreement is found to be invalid, void or unenforceable, the remainder of the provisions of this Operating Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. It is the intent of the parties hereto for the terms and conditions of this Operating Agreement to be interpreted to the greatest extent possible so as to remain valid and enforceable, and any provision or term of this Operating Agreement found by a court to be invalid, void or unenforceable, shall be rewritten by the court pursuant to this intent.

Section 12.11. Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of: (a) the Company; or (b) any Member.

Section 12.12. Counterparts. This Operating Agreement may be signed in multiple counterparts, all of which should be deemed an original and shall constitute one instrument.

Section 12.13. Integration. This Operating Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

Section 12.14. Merger, Consolidation and Conversion of the Company. The unanimous vote of all of the Members shall be required for the Company to merge or consolidate with or into, or convert into, another entity.

ARTICLE XIII

Definitions

For purposes of this Operating Agreement, the following terms shall be defined as follows:

"Act" shall mean the Delaware Limited Liability Company Act, 6 Del. C. Section 18-101, et seq., as amended from time to time.

"Affiliate" shall mean a person controlling, controlled by or under common control with the person specified.

"Agreement" shall mean this Operating Agreement, as amended, modified, supplemented or restated from time to time.

"Allocation Regulations" shall mean the Treasury Regulations issued under Sections 704(b), 704(c) and 752 of the Code, as the same may be modified or amended from time to time. In the event that the Allocation Regulations are revised or amended subsequent to the date of this Operating Agreement, references herein to sections or paragraphs of the Allocation Regulations shall be deemed to be references to the applicable sections or paragraphs of the Allocation Regulations as then in effect.

"Approval" shall mean approved or consented to in writing by all of the Members and a writing evidencing such approval or consent.

"Assignment" shall mean, with respect to a Percentage Interest or part thereof, any offer, sale, assignment, transfer, hypothecation, pledge, gift or any other disposition, whether voluntary or by operation of law. The term "Assign" shall mean to effect an Assignment.

"Bankruptcy" shall mean a bankruptcy under the Federal Bankruptcy Act or insolvency under any state insolvency act.

"Book Value" shall mean: (a) the fair market value of any of the Company's Property at the time of its contribution to the Company by a Member, which amount shall be (i) determined by agreement of the Members and reflected in the Capital Account of the contributing Member as its capital contribution to the Company with respect to such property, and (ii) properly adjusted in accordance with Section 1.704-(b)(2)(iv)(f) and (g) of the Allocation Regulations to reflect depreciation, depletion, amortization and gain or loss, as computed for book purposes with respect to such contributed property; or (b) in the case of all other property of the Company, its Federal adjusted tax basis.

"Capital Account" shall mean, with respect to any Member, the capital account maintained for such Member in accordance with the provisions of Article III hereof. A separate Capital Account shall be maintained for each Member's interest in the Company.

"Capital Contribution" shall mean, with respect to any Member, any contribution to the Company in cash or other property (at such property's initial Gross Asset Value) by such Member whenever made.

"Certificate of Formation" shall mean, as of any date, the Certificate of Formation of the Company, as amended on or prior to such date.

"Company Minimum Gain" shall be determined by computing, with respect to each Non-Recourse Liability of the Company, the amount of gain (of whatever character), if any, that would be realized by the Company if it disposed of (in a taxable transaction) the property subject to such Non-Recourse Liability in full satisfaction thereof (and for no other consideration), and by then aggregating the amounts so computed.

"Code" shall mean the Internal Revenue Code of 1986, as amended, or any successor statute.

"Deficit Restoration Obligation" shall mean, for each Member, the sum of: (a) his or its allocable share (as determined under Section 752 of the Code and the Allocation Regulations), if any, of any recourse indebtedness of the Company with respect to which he or it bears the economic risk of loss; (b) any unconditional obligation of such Member to contribute additional amounts to the capital of the Company within the time period specified in the Allocation Regulations (to the extent not previously taken into account in determining such Member's share of the recourse indebtedness of the Company described in clause (a) of this definition); (c) such Member's share of Company Minimum Gain, if any; (d) such Member's share of Member Minimum Gain, if any; and (e) the maximum amount he or it may be obligated to contribute to the Company upon termination of the Company (to the extent not previously taken into account for purposes of any of the foregoing clauses).

"Depreciation" shall mean an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset; provided, however, that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax depreciation, amortization or other cost recovery deduction with respect to such asset for the relevant period bears to such beginning adjusted tax basis; and provided further, that if the federal income tax depreciation, amortization or other cost recovery deduction for the relevant period is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by Members holding a Supermajority Interest.

"Distributable Cash" shall mean all cash, revenues and funds received by the Company which, in the reasonable discretion of the Manager, is available for distribution to the Members, after the payment of all liabilities which are then due and payable, as well as such Reserves as the Manager deems reasonably necessary for the proper operation of the Company's business.

"Gross Asset Value" shall mean, with respect to any asset, such asset's adjusted basis for federal income tax purposes, except as follows:

- (a) the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as agreed to by Members holding a Supermajority Interest;
- (b) the Gross Asset Value of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Manager, as of the following times: (i) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution; (ii) the distribution by the Company to a Member of more than a *de minimis* amount of Company assets as consideration for an interest in the Company; and (iii) the liquidation of the Company within the meaning of treasury regulation Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (i) and (ii) of this sentence shall only be made if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members; and
- (c) the Gross Asset Value of any Company asset that is distributed to any Member shall be the gross fair market value of such asset on the date of distribution, as determined by the Manager.

If the Gross Asset Value of an asset has been determined or adjusted pursuant to Paragraph (a) or Paragraph (b) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Profits and Net Losses.

"Hypothetical Liquidation Amount" shall mean, with respect to any Member, the amount that would be distributed to such Member as of the end of each fiscal year of the Company if the Company were dissolved and liquidated and (a) all Company assets were sold for cash equal to their Book Value, (b) all Company liabilities were paid, and (c) the remaining cash of the Company was distributed to such Member in accordance with the provisions of Articles III and/or Article V rather than Article VIII.

"Immediate Family" shall mean with respect to any person, his spouse, parents, parents-in-law, issue, nephews, nieces, brothers, sisters, brothers-in-law, sisters-in-law, children-in-law and grandchildren-in-law.

"Member" shall include: (a) those persons or entities listed in Article II; and (b) persons or entities hereafter admitted as members of the Company in accordance with this Operating Agreement.

"Member Minimum Gain" shall mean Company Minimum Gain attributable to Member Non-Recourse Debt.

"Member Non-Recourse Debt" shall mean any Non-Recourse Debt of the Company for which no Member bears the economic risk of loss (as defined in the Allocation Regulations).

"Member Non-Recourse Deductions" shall mean items of Company loss, deduction or Section 705(a)(2)(B) expenditures that are attributable to Member Non-Recourse Debt. For any Company taxable year, the amount of Member Non-Recourse Deductions with respect to any

Member Non-Recourse Debt equals the excess, if any, of the amount of the net increase during such year in the amount of Member Minimum Gain attributable to such Member Non-Recourse Debt over the aggregate amount of any distributions during such year to the Member that bears the economic risk of loss for such debt or proceeds of such debt that are allocable to an increase in the Member Minimum Gain attributable to such debt.

"Members" shall mean all Non-Voting Members and Voting Members.

"Net Profits" and "Net Losses" shall mean for each fiscal year, an amount equal to the Company's taxable income or loss for such fiscal year, determined in accordance with Section 703(a) of the Code (but including in taxable income or loss for this purpose all items of income, gain, loss or deduction that are required to be stated separately pursuant to Section 703(a)(1) of the Code), with the following adjustments:

- (a) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits and Net Losses pursuant to this definition shall be added to such taxable income or loss;
- (b) any expenditures of the Company that are described in Section 705(a)(2)(B) of the Code (or treated as expenditures described in Section 705(a)(2)(B) of the Code pursuant to treasury regulation Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this definition shall be subtracted from such taxable income or loss;
- (c) in the event the Gross Asset Value of any Company asset is adjusted in accordance with Paragraph (b) or Paragraph (c) of the definition of Gross Asset Value above, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profits or Net Losses;
- (d) gain or loss resulting from any disposition of any asset of the Company with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value; and
- (e) in lieu of the Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period, computed in accordance with the definition of "Depreciation" above.

"Non-Recourse Liability" shall mean any Company liability (or portion thereof) for which no Member bears the economic risk of loss (as defined in the Allocation Regulations).

"Non-Voting Members" shall mean Voting Members that have become Non-Voting Members under the terms of this Operating Agreement.

"Original Voting Members" shall mean those Voting Members who are Voting Members as of the date hereof or an assignee thereof who is a member of such Original Voting Member's

Immediate Family. Except as provided in the immediately preceding sentence, no assignee of an Original Voting Member, regardless of whether such assignee becomes a Substitute Member, shall ever be considered an Original Voting Member.

"Percentage Interest" shall mean, for any Member, such Member's Percentage Interest as set forth in Article II, which Percentage Interest may be changed from time to time by the unanimous vote of the Members.

"Property" shall mean the real and personal property in Canton, Massachusetts, located at 150 Royall Street, and any other property as may hereafter be acquired by the Company.

"Regulatory Allocations" shall mean the allocations set forth in Article III hereof.

"Reserves" shall mean funds set aside or amounts allocated to reserves that shall be maintained in amounts deemed sufficient by the Manager for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the business of the Company, or incident to the liquidation of the Company pursuant to Section 12.03.

"Substitute Member" shall have the meaning set forth in Article VI, Section 1 of this Operating Agreement.

"Supermajority Interest" shall mean all of the Original Voting Members of the Company, or, if there are then no Original Voting Members, then the same percentage of Voting Members.

"Transferee" shall mean a permitted transferee of an interest in the Company owned by a Member or its Affiliate.

"Voting Members" shall mean (a) all of the undersigned Members to this Operating Agreement, except any Member that becomes a Non-Voting Member under the terms of this Operating Agreement; and (b) any individual or entity that is approved as a Voting Member upon a vote of all of the Voting Members.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

The undersigned have hereby executed the foregoing Limited Liability Company Operating Agreement as of the 14th day of September, 1999.

SOLE MEMBER:

ROYALL ASSOCIATES REALTY TRUST

Michelle Leveille
Witness

By: Gerald S. Fineberg
Gerald S. Fineberg, its Trustee
and not individually

Judi Bance
Witness

By: William J. Langelier
William J. Langelier, its Trustee
and not individually

SOLE MANAGER:

BLUE HILLS MANAGEMENT CORP.

Michelle Leveille
Witness

By: Gerald S. Fineberg
Gerald S. Fineberg, its President
and Treasurer

184140-145009347

BLUE HILLS OFFICE PARK LLC

**FIRST AMENDMENT TO LIMITED LIABILITY COMPANY
OPERATING AGREEMENT**

Reference is made to the Limited Liability Operating Agreement of Blue Hills Office Park LLC (the "Company") dated as of September 14, 1999 (the "Agreement"), the Certificate of Formation of which was filed with the Delaware Secretary of State on September 14, 1999 (the "Certificate"), which Certificate was amended by a First Amendment to Certificate of Formation filed with the Delaware Secretary of State on September 14, 1999 (the "Amended Certificate").

The undersigned desire to amend the Agreement as follows:

1. For so long as any mortgage lien held by Credit Suisse First Boston Mortgage Capital LLC (the "Lender") exists on the real property commonly known as and numbered 150 Royall Street, Canton, Massachusetts (the "Property") and owned of record by the Company, the sole purpose of the Company shall be as set forth in the Amended Certificate.
2. For so long as any mortgage lien held by Lender exists on the Property, the Company shall be prohibited from engaging in the activities set forth in the Amended Certificate and shall otherwise observe the the covenants contained in the Amended Certificate.

*
Except as amended hereby, the Agreement shall remain in full force and effect unchanged.

EXECUTED as a sealed instrument as of the 14th day of September, 1999.

MANAGER:

BLUE HILLS MANAGEMENT CORP.

By: Gerald S. Fineberg
Gerald S. Fineberg, its President and
Treasurer

SOLE MEMBER:

ROYALL ASSOCIATES REALTY TRUST

By: Gerald S. Fineberg
Gerald S. Fineberg, its Trustee
and not individually

By: William J. Fong
William J. Fong, its Trustee
and not individually

184142-14500/9347

Operating
*In the event of any inconsistency between the terms of the Agreement and
the Amended Certificate, the terms of the Amended Certificate shall control.

Blue Hill
1991

EXHIBIT 26

760990083|Escrow Analysis - Corr|2004-08-13
JUN 08 2004 2:00PM FINEBERG MANAGEMENT

NO.233 P.1/5

fineberg management, inc.

June 8, 2004

Sent Via FAX 925-691-5249

Wells Fargo Bank
Dept 8778
Los Angeles, CA 90084-8778

TR# JUN 08 2004
760990083 MK

Attention: Insurance Escrow Department

RE: Loan No.: 76-0990083
Blue Hills Office Park LLC

Enclosed please find "Paid Receipts" and insurance certificates for Policy Year 5/1/04-5/1/05 for Blue Hills Office Park. Please refund to us the insurance escrow funds.

If you have any questions, please do not hesitate to call.

Sincerely,



Carol R. Falvey

one washington street, suite 400, wellesley, ma 02481 tel (781) 239-1480 fax (781) 239-1493

LNR03726

760990083|Escrow Analysis - Corr|2004-08-13

JULY 10, 2004 12:08 PM 1044 FINEBERG MANAGEMENT an HRH Co

NO. 233

P. 2/5
002/002

150 Royall Street

INVOICE
Premium Paid In Full99 High Street, 28th Floor
Boston, MA 02110-2320T 617-348-1900
F 617-348-1990
R www.hrh.comBlue Hills Office Park LLC
c/o Fineberg Management
One Washington Street
Wellesley, MA 0481Invoice Date 05/01/04
Invoice No. 1-2004
Bill-To Code FINHOT2
Client Code FINHOT2
Inv Order No. 24*26382

Named Insured: Blue Hills Office Park, LLC

Amount Remitted: \$136,250

Please return this portion with your payment.

Make checks payable to: HRH

Effective Date	Policy Period	Coverage Description	Transaction Amount
05/01/04	05/01/04 to 05/01/05	Property, General Liability and Umbrella For: 150 Royall Street Canton, MA 02021 Any questions, please call Julie Powers at (617) 348-1946 Please remit payment to: HRH/Master (WAMA) P.O. Box 18924 Newark, NJ 07191-8924 <u>Premium Paid in Full</u>	\$136,250
Amounts due and payable upon receipt			

LNR03727

760990083|Escrow Analysis - Corr|2004-08-13

FW: Wells Fargo Insurance Escrow

Page 1 of 1

Kesler, Marchelle

From: Joseph Donovan [JOSEPHD@fine-
Sent: Wednesday, June 09, 2004 11 12 AM
To: blakemc@wellsfargo.com
Cc: Gil Stone; Carol Falvey
Subject: FW: Wells Fargo Insurance Escrow

Michelle,

RE Loan #76-0990083 Blue Hills Office Park LLC

Please consider this email authorization to perform and insurance escrow analysis at a rate of \$50

Thank you.

Joseph A. Donovan
CFO

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and as such is privileged and confidential. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

6/9/2004

LNR03728

760990083|Escrow Analysis - Corr|2004-08-13

ACCOUNT ACTIVE TODAY *** CURRENT STATUS *** ADR NOTES
 Acct No. 76-0990083 As Of 6/11/04

BLUE HILLS OFFICE PARK LLC

ONE WASHINGTON STREET, SUITE 400
 WELLSLEY, MA 024810000
 1-781-239-1480 CIF Key LB HD OS SWP

Int Rate 8.49000% Beg 9/99 End 10/29
 Int Code B66 Term 30 yrs 00 mos
 Pmt Freq 01 Type P Hold - - Wrap
 Asses LC Y G/L 01 Language ENGLISH

CURRENT AMTS DUE

Next Payment Due Date 6/11/2004
 Number of Payments Due 01
 Regular Pmts Due 343,802.15
 Miscellaneous Amt .00
 Late Charge Due .00
 Suspense Escrow .00
 Buydown Cd/Amount N .00
 Total Amount Due 343,802.15
 Default Interest .00

	CURRENT BALANCES	MONTHLY CONSTANTS	YEAR TO DATE AMOUNTS PD
PRIN	32,028,486.69	254,652.24	Prin 122,384.67
TAX ESCROW	.00	.00	Interest 1,150,876.53
INS ESCROW	214,996.08	22,085.49	Taxes 276,350.32
RESERVES	3,980,444.35	67,064.42	Late Chge .00
PMI/FHA	.00	.00	Loan Adv .00
MISC.	.00	.00	Mark Val .00
ESCROW	4,195,440.43	343,802.15	LTV Ratio .000
F12=Function Key Help Screen Enter=Page 2 F9=Regulatory Rpt codes			

LNR03729

760990083|Escrow Analysis - Corr|2004-08-13

X221A-01 Selected Trans INQUIRIES
Transaction History

6/11/04 Friday
11:03 A.M.

Account number 760990083 BLUE HILLS OF

	Tran Date	Eff Date	Description	Amount	Paid For Date	Next Due Date	Prin Balance
* 1	6/11/04	6/11	FIRE INS DR	50.00		6/11/04	32028486.69
* 2	6/11/04		MSC RCV CR	50.00		6/11/04	32028486.69
3	6/01/04		INT ON ESC	2625.86		6/11/04	32028486.69
4	6/01/04		INT ON ESC	97.32		6/11/04	32028486.69
5	6/01/04		INT ON ESC	514.16		6/11/04	32028486.69
6	6/01/04		INT ON ESC	304.88		6/11/04	32028486.69
7	5/11/04	5/11	PMT REC'D	343802.15	5/11/04	6/11/04	32028486.69
8	5/03/04		INT ON ESC	2491.58		5/11/04	32056340.32
9	5/03/04		INT ON ESC	93.90		5/11/04	32056340.32
10	5/03/04		INT ON ESC	488.21		5/11/04	32056340.32

* = Transaction pending in daily file

Enter No. and press Enter to process for a full detail display.....

F1=Rtn F9=Chg View F10=Print F13=Reserves F20=G/L Hist F23=Notes Roll Keys

LNR03730

760990083|Escrow Analysis - Corr|2004-08-13

XG073-02 ADD

Notes Maintenance

Jun 11, 2004 Friday
11:03 A.M.

Account number 760990083 BLUE HILLS OF Note date 6/11/2004
*Note type. TR TRANSACTION NOTES
Reference number 2004060006

Note Text

Per borrowers written request to run an off scheduled
analysis. Deducted the \$50.00 fee per written request.

$$F1 = Rtn / Nc$$

F12=Edit Enter=Process

LNRO3731

760990083|Escrow Analysis - Corr|2004-08-13

Message

Page 1 of 2

Kesler, Marchelle

From: Joseph Donovan [JOSEPHD@fine-
Sent: Wednesday, June 09, 2004 11:22 AM
To: Marchelle.C.Blake@wellsfargo.com
Subject: RE: Wells Fargo Insurance Escrow

Marchelle,
Thank you and I apologize for the misspelling.
Joe Donovan

-----Original Message-----

From: Marchelle.C.Blake@wellsfargo.com [mailto:Marchelle.C.Blake@wellsfargo.com]
Sent: Wednesday, June 09, 2004 1:15 PM
To: Joe Donovan; blakemc@wellsfargo.com
Cc: Gil Stone; Carol Falvey
Subject: RE: Wells Fargo Insurance Escrow
Importance: High

Joseph,
Thank you I will start the process on this tomorrow and issue you a refund check by next week. Please call me should you have any questions.

Marchelle C. Blake
Loan Service Representative
Wells Fargo Commercial Mortgage Servicing
1320 Willow Pass Rd (Suite 205)
Concord, CA 94520
Phone: 800-986-9711 Ext 5397
Fax # 925-691-5249
Email address: blakemc@wellsfargo.com

-----Original Message-----

From: Joseph Donovan [mailto:JOSEPHD@fine-hotels.com]
Sent: Wednesday, June 09, 2004 11:12 AM
To: blakemc@wellsfargo.com
Cc: Gil Stone; Carol Falvey
Subject: FW: Wells Fargo Insurance Escrow

Michelle,

RE: Loan #76-0990083 Blue Hills Office Park LLC

Please consider this email authorization to perform and insurance escrow analysis at a rate of \$50

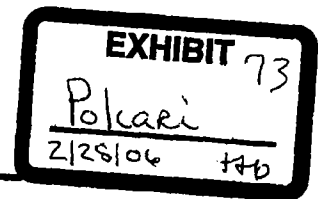
Thank you

Joseph A. Donovan
CFO

6/17/2004

LNR03732

EXHIBIT 27



From: Joe Polcari
Sent: Monday, September 13, 2004 11:21 AM
To: Larry Golinsky
Subject: Blue Hills

I spoke with David Tobin. He says you guys discussed a "mini-sale" with 10 or so assets. He is gathering information from the other AM's and hopes to get into the pricing soon. It sounds like perfect timing. I would like to jump in with this one, and told him that I would gather information on Blue Hills. The small number of assets is great, because we can flip this little group of loans without the brain damage that goes along with the larger sale.

EXHIBIT

74

Polcari

2/28/06 Hb

From: Larry Golinsky
Sent: Wednesday, September 08, 2004 11:20 AM
To: Joe Polcari
Cc: Javier Benedit
Subject: RE: Blue Hills

Question on #4 is whom runs the process? Us or the Trustee. If we run the process (loan sale or REO sale) can we collect offers and then come in and meet the highest offer?

-----Original Message-----

From: Joe Polcari
Sent: Wednesday, September 08, 2004 11:47 AM
To: Larry Golinsky
Cc: Ciney Torres
Subject: Blue Hills

Larry, Ciney will be e-mailing to you Section 3.18 of the CSFB 1999-C1 PSA. Here is what it says:

- 1) We can purchase a Defaulted Loan (defined as a loan that is 60 days delinquent) at the Purchase Price (defined as the unpaid principal, accrued interest, unreimbursed advances and interest on advances). It appears that we have the first right of purchase, followed by the Servicer, followed by the Directing Certificateholder, which I read as Madison.
- 2) We can offer to sell a Defaulted Loan, not otherwise purchased by the parties mentioned above, if the SS determines that the sale would produce a greater recovery on a PV basis than would liquidation of the Mortgaged Property. The offering must be made for a period of at least 20 days, but not more than 90 days. In the event that the bids do not equal or exceed the Purchase Price, the SS can accept what it determines to be a fair price.
- 3) We have to give the Trustee and Servicer three business days notice of our intent to sell a Defaulted Loan (or REO Property).
- 4) If the SS is the high bidder, then the Trust determines whether the SS bid is a "fair price". In determining this, the Trustee may rely on the opinion of an appraiser at the expense of the Trust Fund.

Section 3.18 also references Section 2.03(b), which deals with puts, and Section 9.01, which deals with the Loan Seller's ability to purchase the remaining loans if the pool balance drops below 1% of the original total balance.

The loan is not yet 60 days delinquent. I don't have the docs yet, but from speaking with Job, it appears that the borrower may have the right to use reserve funds to make P&I payments up to \$1MM.

EXHIBIT 75Polcari
2/28/06 Hb

From: Javier Benedit
Sent: Wednesday, September 08, 2004 11:28 AM
To: Larry Golinsky; Joe Polcari
Subject: RE: Blue Hills

Larry/Joe,

The Trustee would have to review a current appraisal or order a new one (at their discretion) and set the "fair price" according to such appraisal. We would then have to bid up to that "fair price" amount. The Trustee here is Wells Fargo, they may not be as lenient as Lasalle and may want to order their own appraisal. I have good contacts there, however, and may be able to work the process through.

Let me know if and when you need my assistance.

-----Original Message-----

From: Larry Golinsky
Sent: Wednesday, September 08, 2004 12:20 PM
To: Joe Polcari
Cc: Javier Benedit
Subject: RE: Blue Hills

Question on #4 is whom runs the process? Us or the Trustee. If we run the process (loan sale or REO sale) can we collect offers and then come in and meet the highest offer?

-----Original Message-----

From: Joe Polcari
Sent: Wednesday, September 08, 2004 11:47 AM
To: Larry Golinsky
Cc: Ciney Torres
Subject: Blue Hills

Larry, Ciney will be e-mailing to you Section 3.18 of the CSFB 1999-C1 PSA. Here is what it says:

- 1) We can purchase a Defaulted Loan (defined as a loan that is 60 days delinquent) at the Purchase Price (defined as the unpaid principal, accrued interest, unreimbursed advances and interest on advances). It appears that we have the first right of purchase, followed by the Servicer, followed by the Directing Certificateholder, which I read as Madison.
- 2) We can offer to sell a Defaulted Loan, not otherwise purchased by the parties mentioned above, if the SS determines that the sale would produce a greater recovery on a PV basis than would liquidation of the Mortgaged Property. The offering must be made for a period of at least 20 days, but not more than 90 days. In the event that the bids do not equal or exceed the Purchase Price, the SS can accept what it determines to be a fair price.
- 3) We have to give the Trustee and Servicer three business days notice of our intent to sell a Defaulted Loan (or REO Property).
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Section 3.18 also references Section 2.03(b), which deals with puts, and Section 9.01, which deals with the Loan Seller's ability to purchase the remaining loans if the pool balance drops below 1% of the original total balance.

The loan is not yet 60 days delinquent. I don't have the docs yet, but from speaking with Job, it appears that the borrower may have the right to use reserve funds to make P&I payments up to \$1MM.

EXHIBIT 103

Polcari
3/1/06 tlb

From: Javier Bedit
Sent: Tuesday, November 02, 2004 10:33 AM
To: Joe Polcari; Larry Golinsky
Subject: RE: Blue Hills

On your first question, your interpretation is correct. If we do not elect to purchase the Defaulted Loan as SS or Directing Certificateholder at the "Purchase Price" (par) then we must go on to market the property for at least 20 days. If we bid on the property for an amount less than the Purchase Price then we must send an appraisal to the Trustee, or they have the right to obtain one on their own, for determination of "fair price".

As for your second question, an assignment of a bid is basically a sale, but although I often do a good job of pretending I'm an attorney I don't really know how it would be viewed legally. I would just check with Tom Nealon, but in my humble opinion I don't think its any different from a sale.

-----Original Message-----

From: Joe Polcari
Sent: Tuesday, November 02, 2004 11:19 AM
To: Javier Bedit; Larry Golinsky
Subject: RE: Blue Hills

Javier, I wanted to revisit this issue and make sure that we are complying with the PSA. We are discussing a note sale of this asset. My interpretation of the PSA (below) leads me to believe that we have to market the note for at least 20 days, after we provide 3 days notice of our intent to sell. If our Commercial Properties Group wants to bid on it, and is the high bidder, the Trust will be entitled to an appraisal to establish that our bid is a "fair price". Is there anything else I need to focus on?

One possible disposal approach involves us conducting the foreclosure sale, and then selling our winning bid. Under this scenario, we would not be selling the note, nor would we be selling the real estate. It's somewhere in between. Would this approach require us to do anything different as compared to a note sale?

-----Original Message-----

From: Javier Bedit
Sent: Wednesday, September 08, 2004 12:34 PM
To: Larry Golinsky; Joe Polcari
Subject: RE: Blue Hills

Not sure I understand, if we are buying what marketing would take place? Once Trustee determines fair price, if we are the buying party, we just pay such price for the asset and buy out of the Trust.

-----Original Message-----

From: Larry Golinsky
Sent: Wednesday, September 08, 2004 12:31 PM
To: Javier Bedit; Joe Polcari
Subject: RE: Blue Hills

Step #1 is we inform Trustee we are an interested party. Step #2 is we provide appraisal to Trustee, #3 step is they determine if it is a fair price. What happens after that and make sure you comment on whom runs the marketing process, if any.

-----Original Message-----

From: Javier Bedit
Sent: Wednesday, September 08, 2004 12:28 PM
To: Larry Golinsky; Joe Polcari
Subject: RE: Blue Hills

Larry/Joe,

The Trustee would have to review a current appraisal or order a new one (at their discretion) and set the "fair price" according to such appraisal. We would then have to bid up to that "fair price" amount. The Trustee here is Wells Fargo, they may not be as lenient as Lasalle and may want to order their own

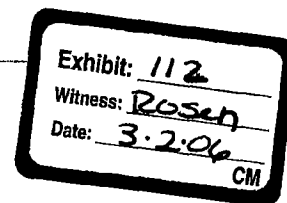
EXHIBIT 28

RE: New Loans for Transfer Date: 8/18/2004

Page 1 of 3

Barnett, Bruce

From: Randy Wolpert [RWolpert@lnrproperty.com]
Sent: Thursday, September 09, 2004 10:10 AM
To: Ronald Schrager; David Hall
Cc: Kevin Wodicka; David Team; Joe Polcari
Subject: RE: New Loans for Transfer Date: 8/18/2004



David, I think Joe is going to see the property today, not sure if you've going with him and I don't know if you've had any further opportunity to ponder this. Keep us in the loop on your thoughts and I know Joe will keep you apprised of our plans. If we are going to pursue it internally, we'll need to discuss process, since the PSA will dictate how we need to go about this and we'll need to involve the trustee. Ultimately we'll have to be ready with our number as bids are coming in.

-----Original Message-----

From: Ronald Schrager
Sent: Monday, August 23, 2004 3:56 PM
To: David Hall
Cc: Kevin Wodicka; Randy Wolpert; David Team
Subject: RE: New Loans for Transfer Date: 8/18/2004

Here's my take based on your comments:

Your valuation analysis seems to make sense--the biggest variable is how long it takes you to find the user. We can try and get you some market stuff if we have any but you would probably be able to get as good or better info. than we will get. From the CMBS side we will likely have to put this on the market immediately as the carry costs associated with this will kill us. At that point we essentially have a ROFR and will be able to see where the offers come in. If we think everyone is bottom feeding we can scoop this up at that point. My sense is this is well-located real estate and in a market recovery this is a good asset. Everything I'm hearing is that the market in general is starting to turn the corner. If you agree I think you should start to think about where you would feel comfortable owning this in the event we take this to market quickly. We should be able to get you access to the building assuming the borrower is cooperating (I think he is as of now). If we buy it for \$60, spend \$40 to bring in a tenant at \$13NNN this could work unless it takes us several years to find a user. Or if this is multiple buildings could we multitenant?

-----Original Message-----

From: David Hall
Sent: Monday, August 23, 2004 11:05 AM
To: Ronald Schrager
Cc: Kevin Wodicka; Randy Wolpert; David Team
Subject: RE: New Loans for Transfer Date: 8/18/2004

Ron, sorry for the delay on this. here is my gut feel.

This all depends on the interior finishes and tenant upgrades for financial back office. The only way to make money is to get comfortable that you've got plug-n-play, (or buy this real cheap). If tenant walks in and needs \$30 in TIs, then you're dead (if we have to start with \$117 as basis). This is a 12 -14 NNN market and you never want to let project costs exceed \$115 - \$120. I would say Fleet is likely to have done all the right things to make this work for its own operations - but I have not seen the inside.

So, if you have plug-n-play then dark value is 90 -100 but its still very scary at those numbers.

2/24/2006

LNR04251

RE: New Loans for Transfer Date: 8/18/2004

Page 2 of 3

Safer underwriting is to assume \$60--70 dark and know you're looking at 30 - 40 in cost to make a deal. Time to make a deal is obviously another problem - could be years not months with that new vacant building immediately next door.

Problem with this site has always been access. Its just real tough to get to. It has great signage on major highway but no interchange that serves it directly. Thats why its back office - workers know how to get to the office but no -one else can find the place.

I do not see any other re-development play in terms of tear down for housing - etc. Canton will never let that happen.

Would like to see any appraisal info and get a chance to see what brokers think. My sense of the market could need some updating as things are starting to happen here.

-----Original Message-----

From: Ronald Schrager
Sent: Thursday, August 19, 2004 11:59 AM
To: David Hall
Cc: Kevin Wodicka; Randy Wolpert; David Team
Subject: FW: New Loans for Transfer Date: 8/18/2004

David,

Congrats on the Fan Pier deal. Looks like you got us in a great position to outflank the local favorites.

Wanted to get a read from you on a potential mining opportunity, Blue Hills Office Park in Canton. Here is what we know:

Gerald Fineberg is bwr. 100% occ as of 6/03. A 2-story, 274M s.f. Class A office building built in 1970. Property was 96% leased to Fleet Bank (formerly BankBoston, the name of the division in the building is Equiserve) until July 2004. Fleet vacated at lease expiration, reportedly to a building they have purchased next door from National Development (which sat vacant for 2 years before this as is another 175ksf newly constructed building on same street). Despite good back office location, mkt is soft and quasi-single tenant lease rolls. Debt is \$32MM or \$117 psf.

Address is:
Blue Hills Office Park
150 Royall Street
Canton, MA 02021

Would like to know from you (1) what do you think the dark value of this is if we sold it today and (2) do you think this is an asset we would want to purchase vacant and redevelop.

Thanks.

Ron

LNR04252

2/24/2006

RE: New Loans for Transfer Date: 8/18/2004

Page 3 of 3

2/24/2006

LNR04253

EXHIBIT 29

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BLUE HILLS OFFICE PARK LLC,

Plaintiff, Defendant-in-Counterclaim.

v.

Civil Action No. 05-CV-10506 (WGY)

J.P. MORGAN CHASE BANK, as Trustee for the
Registered Holders of Credit Suisse First Boston
Mortgage Securities Corp., Commercial Mortgage
Pass-Through Certificates, Series 1999-C1.,

Defendant, Plaintiff-in-Counterclaim

and

CSFB 1999 – C1 ROYALL STREET, LLC;

Defendant, Plaintiff-in-Counterclaim,

v.

WILLIAM LANGELIER and GERALD
FINEBERG,

Defendants-in-Counterclaim.

**CSFB 1999 – C1 ROYALL STREET, LLC'S ANSWERS TO BLUE HILLS OFFICE
PARK LLC, GERALD FINEBERG AND WILLIAM LANGELIER'S
SECOND SET OF INTERROGATORIES**

Defendant CSFB 1999 – C1 Royall Street, LLC ("CSFB") hereby answers the Second
Set of Interrogatories of Blue Hills Office Park LLC, Gerald Fineberg and William Langelier.

b. all communications or other documents that refer to, relate to or support the reasons for denial, including, without limitation, the present location and custodian of any copy thereof, the author of such documents, and the identities of all recipients of such documents.

RESPONSE NO. 13

CSFB objects to this Interrogatory because it is overly broad and unduly burdensome.

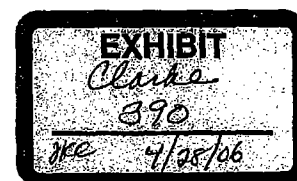
CSFB further objects to this Interrogatory to the extent that it calls for information protected by the attorney-client privilege and the work product doctrine. CSFB further objects to this Interrogatory to the extent it calls for identification of documents, correspondence, and communication outside of CSFB's custody, possession or control and/or to which CSFB was not a party. Subject to and without waiving the foregoing and the General Objections, CSFB answers as follows:

1. Exhibit G to Blue Hills' Second Amended Complaint demonstrates that although the document attached to the Requests as Exhibit "G" is dated August 2, 2004, it was not faxed to Wells Fargo until August 4, 2004.
2. Joseph Donovan, of Fineberg Management Inc., testified at his deposition on February 14, 2006 that the document attached to the Requests as Exhibit "G" may have been mailed to Wells Fargo on August 2, 2004, but was not faxed to Wells Fargo until August 4, 2004.
3. The Loancator Tracking Log (WF01891-01893) states that the document attached to the Requests as Exhibit "G" was received by Wells Fargo on August 4, 2004.

In accordance with Rule 33(d), CSFB states that further information responsive to this Interrogatory may be ascertained from documents and business records CSFB has produced or will produce in this action. CSFB reserves the right to supplement this Answer as discovery proceeds.

EXHIBIT 30

Richard A Clarke
Business and Credit Advisory Services



March 30, 2006

Peter McGlynn, Esquire
Bernkopf Goodman LLP
125 Summer Street
Boston, Massachusetts 02110 1621

Re: *Blue Hills Office Park LLC v. J.P. Morgan, et al.*
Civil Action No. 05-10506-WGY

Dear Mr. McGlynn:

Pursuant to your request, I submit this preliminary report concerning the subject litigation.

You have asked as to whether or not I could render certain opinions in connection with the above referenced action as follows:

- Am I able to render an opinion within a reasonable degree of professional certainty as to whether or not Wells Fargo Commercial Mortgage Servicing ("Wells Fargo"), as Master Servicer, and/or Lennar Partners ("LNR"), as Special Servicer, adhered to the "Servicing Standards" of Master Servicer and Special Servicer respectively under that certain Pooling and Servicing Agreement ("Pooling and Servicing Agreement" or "PSA") between Credit Suisse First Boston Mortgage Securities Corp. and others dated October 11, 1999?
- Am I able to render an opinion within a reasonable degree of professional certainty as to whether or not Wells Fargo, as Master Servicer, and/or LNR, as Special Servicer, adhered to the industry standards for commercial loan mortgage servicers of commercial properties such as, for example, 150 Royall Street, Canton, Massachusetts?
- What, if any, reporting requirements to credit rating agencies did Wells Fargo, as Master Servicer, and LNR, as Special Servicer, have with respect to the loan granted by Credit Suisse First Boston Mortgage Securities Corp. to Blue Hills Office Park LLC ("BHOP")?

I have determined, based upon my review of the documents and other materials which I considered and which are listed below, that I am able to render opinions with respect to each of the foregoing.

My opinions as set forth herein as to certain lending and business issues relating to the BHOP claim against the various defendants are based on my knowledge and experience in these areas coupled with review of the documents and other materials identified herein.

Richard A Clarke
Business and Credit Advisory Services

4. LNR, as Special Servicer, deviated materially from the prevailing and applicable industry standards for third party loan servicing; and
5. LNR was interested in acquiring the Property, and was predisposed against one of BHOP's principals, Gerald Fineberg, which created serious conflicts of interest and contributed to LNR's rush to foreclose the Property and its failure to even meet with BHOP to consider workout alternatives.

Supporting Discussion

1. Wells Fargo, as Servicer, failed to adhere to the "Servicing Standards" set forth in the Pooling and Servicing Agreement.

Section 3.01 of the Pooling and Servicing Agreement provides in relevant part as follows:

Each of the Servicer and the Special Servicer shall diligently service and administer the Loans on behalf of the Trust Fund and in the best interests of and for the benefit of the Certificate Holders as well (as determined by the Servicer or the Special Service as the case may be, in its good faith and reasonable judgment) in accordance with applicable law, the terms of the respective Loans or Specially Serviced Loans and to the extent consistent with the foregoing, the terms of this agreement . . . and to the extent consistent with the foregoing, in accordance with the higher of the following Standards of Care: (1) the same manner in which, and with same the care, skill, prudence and diligence with which, the Service or the Special Servicer, as the case may be, services and administers similar commercial or multifamily mortgage loans for other third-party portfolios giving due consideration to the customary and usual standards of practice of prudent institutional multifamily or commercial mortgage lenders servicing their own mortgage loans and (2) the same care, skill, prudence and diligence with which the Servicer or Special Servicer, as the case may be, services and administers similar commercial or multifamily mortgage loans owned by the Servicer or Special Servicer, in either case exercising reasonable business judgment and with a view to the maximization, on a present value basis (discounting at the related Mortgage Rate), of timely recovery of principal and interest on the Loans or Specially Serviced Loans, as applicable, but without regard to: (i) any relationship that the Servicer or Special Servicer, as the case may be, or any Affiliate thereof may have with the related Mortgagor or any other party to this Agreement; (ii) the ownership of any Certificate by the Servicer or Special Servicer, as the case may be, or any Affiliate thereof; (iii) the Servicer's obligation to make Advances; (iv) the Servicer's or Special Servicer's, as the case may be, right to receive compensation for its services hereunder or with respect to any

Richard A Clarke
Business and Credit Advisory Services

particular transaction; and (v) the Servicer's or Special Servicer's ownership, servicing or management of any other mortgage loans or mortgaged properties (the foregoing, collectively referred to as the "Servicing Standard").

In their Answers to BHOP's Second Amended Complaint, the Defendants each admit:

"that, pursuant to an agreement with other parties (not including plaintiff), LNR Partners agreed to administer and service certain loans, including the Blue Hills loan, in accordance with applicable law, the terms of the loans' documents and, to the extent not inconsistent with the foregoing, that other agreement and whichever standard is higher between the manner in which LNR Partners would administer loans owned by other third parties and the manner it administers loans owned by itself." Answer, ¶ 63.

The following discussion identifies conduct by Wells Fargo which, in my opinion, was in direct violation of the Servicing Standard contained in the Pooling and Servicing Agreement.

Section 3.01(a) of the PSA contains language which proscribes the conduct expected of Servicers (also known as Master Servicers) and Special Servicers in administering large pools of loans. The PSA applies a "prudent standard," not simply a prevailing standard. See Pooling and Servicing Agreement p. 69. This language is fairly typical in the segment of the banking industry which is also commonly known as Commercial Mortgage Backed Securities or CMBS lending. Although not generally a party to a PSA, every borrower, subject to the possibility of a new note holder and/or servicer, has the right to expect that its loan will be administered by the Servicer and Special Servicer according to the Servicing Standard. In order to have confidence in the treatment of each individual pooled loan, the marketplace – including lenders, borrowers, certificate holders – have a right to expect that pooled loans will be serviced strictly in accordance with the Servicing Standard. Fairness, predictability, professionalism and reasonable actions devoid of conflict or animus are all essential elements of the actions and conduct expected of Servicers and Special Servicers.

Section 3.01(a) of the PSA, incorporates the industry practices of a prudent institutional multifamily or commercial mortgagor. In particular, Wells Fargo, as the Servicer, and LNR, as the Special Servicer were required to service and administer all loans diligently and in accordance with the higher of the standards employed by them in administering commercial mortgage loans for other third-party portfolios or commercial mortgage loans owned by Wells Fargo or LNR.

Section 3.01(a), also requires the Servicer and Special Servicer to adhere to the following:

- The elevated level of skill, prudence and diligence adverted to above must be coupled with the exercise of reasonable business judgment with a view toward the maximization of the timely recovery of loan principal and interest;

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- Wells Fargo and LNR each must disregard in the servicing of a loan any prior relationship either they or any affiliate thereof may have had with a mortgagor (which under the “Definitions” section of the PSA would include, in this case, BHOP and the two loan guarantors, Gerald Fineberg and William Langelier);
- Wells Fargo and LNR must disregard in the servicing of a loan their right to receive compensation under the PSA “with respect to any particular transaction”;
- Wells Fargo and LNR must disregard their ownership, servicing or management of any other mortgage loan or properties.

The PSA also distinguishes between the roles of Servicer and Special Servicer and the responsibilities each of them has. In general, Wells Fargo was obliged to service BHOP’s loan until it was transferred to LNR following default or where a default is imminent also known as a Servicing Transfer Event. Thereafter, upon a “Servicing Transfer Event,”¹ Wells Fargo was required to immediately give notice thereof to LNR and to deliver all related documents and files within five “Business Days” of the Servicing Transfer Event. However, under Section 3.21(a) of the PSA, Wells Fargo also had the obligation to continue to act as loan administrator until LNR had commenced servicing the BHOP Loan. Further, under Section 3.21(f), Wells Fargo was also required to provide LNR with information relating to the BHOP Loan “to enable [LNR] to negotiate with [BHOP]” Section 3.4(f) also obligated LNR to: “Use its reasonable best efforts to cause the related mortgagor to cure any default and/or remedy any such event, workout or modify the Loan consistent with the terms of this agreement”²

Under Section 3.09(a), Lennar had the right, consistent with the Servicing Standard, to foreclose upon the Property only if it continues to be in default and only so long “as . . . no satisfactory arrangements can be made for collection of delinquent payments”

Finally, under Section 3.20 of the PSA, LNR had the authority to reduce or forgive principal, accrued interest, prepayment or yield maintenance premiums and charges or forebear on the enforcement of any rights under any of the Loan Documents including the reduction of a borrower’s monthly payment.

¹ Defined in the Definitions section as “a material default of the loan or that a payment default is imminent and is not likely to be cured within 60 days.”

² Subsection (f) provides in relevant part as follows: “Upon receiving notice of . . . (ii) the existence of a material non-payment default or (iii) the request by a mortgagor for an amendment or modification of a Loan, the Servicer shall immediately give notice thereof and shall deliver copies of the [related files] to the Special Servicer and shall use its reasonable best efforts to provide the Special Servicer with all information relating to the Loan reasonably requested by the Special Servicer to enable it to negotiate with the related mortgagor The Servicer shall use its reasonable best efforts to comply with the preceding sentence within 5 Business Days . . . and upon receiving such documents and information, the Special Servicer shall use its reasonable best efforts to cause the related mortgagor to cure any default and/or remedy any such event, workout or modify the Loan consistent with the terms of this agreement and/or prepare for such proceedings.”

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- As discussed earlier, LNR's concern about BHOP's entitlement to use the Reserve Accounts to pay debt service left them hopeful that BHOP would default on the Note before the Reserve Account had been depleted.

LNR's conduct, as amply documented by the documents and materials which I have reviewed, demonstrates that LNR not only violated the letter and the spirit of Job Warshaw's written commitment to meet with BHOP to discuss the Loan status, but it also violated the Servicing Standard contained in Section 3.01 of the PSA; namely, LNR's assumption that because Mr. Fineberg had allegedly "given back" two hotels, that Mr. Fineberg would not be interested in working out the Note; and LNR's conduct was hopelessly conflicted by its strong desire to buy the Note for its own account and "flip" it at a profit.

As noted in part 1 of the Supporting Discussion, LNR, a Special Servicer, was obligated under Section 3.01 of the PSA to adhere to the higher of two standards of care recommended in either case by the exercise of reasonable business judgment in a view to maximizing on a present value basis the timely recovery of principal and interest on the Loan. In my opinion, LNR's conduct fell far short of the Servicing Standard contained in Section 3.01 of the PSA.

The record shows that LNR, correctly or incorrectly, estimated the loss on this Note at somewhere between \$11 million and \$20 million. This represented anywhere from one-third to two-thirds of the Loan's principal balance. LNR also knew, or should have known, from information contained in the Loan origination file that BHOP's principals had substantial net worths and that a foreclosure sale could likely result in a large tax bill under IRS "debt forgiveness" rules. Despite having this knowledge, LNR made no attempt to meet with BHOP and Messrs. Fineberg and Langelier to see if they wished to develop some plan or proposal to infuse new capital into the Property in exchange for Note forbearance or forgiveness by LNR.

In my opinion, the prudent and diligent course of action here would have been for LNR to provide notification to BHOP of its failure to pay the real estate taxes and give them an opportunity to promptly cure that failure (to the extent that there was no cure period in the Note or in the Loan documents) and to request a proposal from BHOP on how the Property would be remarketed and how long it would take for the Property to be fully tenanted or at least sufficiently tenanted to cover debt service and reserve payment obligations.

At the time that LNR defaulted BHOP on September 17, 2004, LNR also was armed with the knowledge that the real estate market was trending upward. Property values and rents were increasing and large blocks of space in the area where the Property was situated were being leased up and/or sold. LNR also knew that there was approximately \$2.7 million in the Reserve Accounts which, but for LNR's Note default, could have been accessed by BHOP for tenant improvements and repairs.

In summary, in my opinion, Lennar had all of the necessary "ingredients" to achieve a successful workout with BHOP:

EXHIBIT 31

Ronald F. Greenspan
Volume 1 - May 8, 2006

Page 1

Volume I, Pages 1-312

Exhibits: 414-417

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
Civil Action No. 05-CV-10506 (WJY)

BLUE HILLS OFFICE PARK LLC

Plaintiff, Defendant-in-Counterclaim

vs.

J.P. MORGAN CHASE BANK, et al.

Defendants

(Complete caption on next page)

DEPOSITION OF RONALD F. GREENSPAN

Monday, May 8, 2006, 9:30 a.m.

Bernkopf Goodman LLP

125 Summer Street, 13th Floor

Boston, Massachusetts

-----Reporter: Joan M. Cassidy, RPR, CRR-----

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Ronald F. Greenspan
Volume 1 - May 8, 2006

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1 A. Only to the extent they are consistent with
2 the PSA terms, the law, and the loan documents.

3 Q. And to the extent that they are consistent
4 with other provisions of the PSA, the law, and the
5 loan documents, can you generally -- can you
6 articulate for me generally what these two standards
7 here require of the servicer and the special
8 servicer?

9 A. Yes. The first one is the standard of
10 care, the skill, prudence, and diligence with which
11 they service loans for other third parties; and the
12 second one is the same care, skill, prudence and
13 diligence which they exercise in performing this --
14 yes, mortgages owned by such servicers or special
15 servicers. It then goes on further and modifies
16 both of those to say that in all cases, both of
17 those cases, they have to "further exercise
18 reasonable business judgment with a view to the
19 maximization, on a present value basis (discounting
20 at the related mortgage rate), of timely recovery of
21 principal and interest" and then lists five things
22 they must disregard.

23 Q. The so-called Romanettes, correct?

24 A. Yes.

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1 recovery of principal and interest?

2 A. Yes.

3 Q. What is your understanding of what that
4 practice or procedure would be?

5 A. You evaluate the situation and the
6 alternatives and determine which path or paths is
7 likely to give you the highest present value.

8 Q. Have you finished your answer?

9 A. Yes.

10 Q. When you say the "highest present value,"
11 you are talking about of the principal and interest
12 balance due at that time on the loan?

13 A. Yes.

14 Q. *Now, this evaluative process, does that --
15 do you have any understanding as to whether or not
16 there is any industry practice that instructs the
17 servicer or the special servicer on how best to
18 evaluate the situation to determine which path or
19 paths are going to lead to the timely -- or the
20 maximization of the timely recovery of principal and
21 interest?

22 MR. FALBY: Objection.

23 A. Can I hear the question again.

24 *(Question read.)

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1 Q. Within that language it indicates the
2 servicer and the special servicer are to perform
3 these services, quote, "with a view to the
4 maximization on a present value basis (discounting
5 at the related mortgage rate), of timely recovery of
6 principal and interest on the loans"; do you see
7 that?

8 A. Yes.

9 Q. Do you have an understanding as to what is
10 intended or what is meant by that particular
11 language in 3.01(a)?

12 A. Yes.

13 Q. Can you please tell us.

14 A. That the sole objective, consistent with
15 operating pursuant to the agreement, the law, and
16 the loan documents, is to create, as calculated on
17 what's known as a present-value basis, which means
18 discounting a stream of cash flows and discounting
19 them at the mortgage rate -- the objective is to
20 maximize that discounted value.

21 Q. And is there, in your opinion, any
22 particular industry practice or procedure that would
23 be followed by servicers and special servicers to,
24 quote, maximize on a present-value basis the timely

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1 A. I'm sorry, I don't understand what you mean
2 by a "practice that instructs."

3 Q. The evaluative process that a servicer or a
4 special servicer undertakes to -- and I'm
5 paraphrasing your previous answer -- determine which
6 path or paths to take, is that something that you
7 have been exposed to in your experience on an
8 industry-wide basis?

9 MR. FALBY: Objection.

10 A. I've certainly been exposed to it. I don't
11 know what you mean by "on an industry-wide basis."

12 Q. Are there any industry practices
13 governing -- strike that -- industry practices that
14 provide guidance on how this evaluative process
15 should be undertaken by a servicer or a special
16 servicer?

17 A. I believe everybody in the industry knows
18 what "present value" means and how to conduct a
19 present valuing. I don't know whether there is what
20 I'd describe as an authoritative or standardized
21 instruction manual.

22 Q. Have you finished your answer?

23 A. Yes.

24 Q. Putting aside the instruction manual, are

23 (Pages 89 to 92)